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1938 National railway
wage reduction Controversy
-
Brief on behalf of the Carriers.

Before the Presidential Emergency Board Appointed Under the Terms of Section 10 of the Railway Labor Act:

Honorable Walter P. Stacy, Chairman,
Dean James M. Landis, and
Professor Harry A. Millis.

1938 NATIONAL RAILWAY WAGE REDUCTION CONTROVERSY.

BRIEF ON BEHALF OF THE CARRIERS.

J. Carter Fort,
William T. Faricy,
Henley C. Booth,
Guy W. Knight,
Sidney S. Alderman,
Attorneys for the Carriers.

Washington, D. C.,
October 17, 1938.

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1938 NATIONAL RAILWAY WAGE REDUCTION CONTROVERSY.

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Foreword.

The Board will understand the necessary limitations involved in writing and having printed a brief in a case of this kind, a case tried within the time limits necessitated by the statute and rapidly developing from day to day throughout two weeks, and in having such brief ready to file at the conclusion of the case. This brief has necessarily had to have a very rapid and progressive development. It obviously must lack the cohesion, finish of outline, and, what is more important, the condensation, possible in a brief prepared at leisure upon a record already completed and closed.

We have thought, however, that a brief of this nature would be helpful to the Board. We divide it into two parts. Part I is in the nature of a trial brief. It is factual. It attempts to present and summarize the carriers' case on the facts. Part II is the argument. It attempts to analyze the conflicting philosophies which emerge from almost wholly undisputed basic facts. It attempts to present, in a necessarily hasty and summary way, the arguments and theories upon which the carriers rely, and to answer the arguments and theories upon which the employees rely, from their conflicting respective viewpoints regarding the essentially undisputed basic facts.

In the appendix, we have put a number of the key exhibits introduced by the carriers in this case, merely as a matter of convenience to the Board and to others who may read the brief. It will be understood that this selection represents no especial emphasis on these particular exhibits and that we rely fully upon all of the exhibits filed in the record.

PART I.

FACTUAL AND TRIAL BRIEF.

I.

THE NATIONAL EMERGENCY CALLING FOR THE APPOINTMENT OF THIS EMERGENCY BOARD AND THE ISSUES WHICH ARISE.

1. The 1932 Wage Deductions, Their Restoration, and the 1937 Increases.

From the beginning of the depression in the fall of 1929, railway traffic and earnings suffered sharp declines, but not until February, 1932, was there any reduction in railway wages. In view of the depressed condition of the industry, the organized railway employees voluntarily agreed at that time to a ten per cent deduction from their pay checks for a temporary period. This deduction was extended for a further period by a supplemental agreement arrived at after the Federal Coordinator of Transportation had intervened in the matter. That ten per cent deduction was gradually eliminated and the pre-depression level of rail wages was completely restored by April, 1935. (Tr. 1651-1652)

Early in 1937, when railroad business appeared to be on the upward trend, the employees presented to the managements of the railroads demands for further increases in basic rates of pay, the train and engine service organizations demanding 20 per cent increase and the other, or non-operating, organizations demanding an increase of 20 cents an hour. The carriers refused to accede to these demands and the matter was given national handling as a national controversy under the provisions of the Railway Labor Act, between the employees and the Class I railroads of the United States. The negotiations went through the course contemplated by the Railway Labor Act and failed to result in an adjustment of the controversy. Services of the National Mediation Board were invoked and, after prolonged handling by the Board with the respective parties, it was able to bring about settlements of the controversy, first a settlement between the railroads and the fourteen non-operating groups of employees and thereafter a separate settlement between the railroads and the train and engine service organizations. These settlements resulted in additional wage increases, effective in the summer and fall of 1937: an increase of 5 cents an hour for the non-operating employees, effective August 1, and an increase of 44 cents a day in daily rates for the train and engine service employees, effective October 1, these increases averaging over-all approximately 8 per cent

for all employees, on top of the complete restoration of pre-depression wage levels. (Tr. 1644-1649)

Whatever prospects of improved general and railroad business existed at the time of these 1937 wage increases, as supposed justification for the increases, almost immediately disappeared. Business in general promptly and progressively fell into a new recession or depression. Railroad traffic and earnings took an alarming nose-dive. In February, 1938, net earnings reached a point lower than at any time during the lowest period of the 1932-1933 depression period. During the first eight months of 1938, total operating revenues were smaller by 20 per cent than in the same period of 1937, while net railway operating income decreased 62 per cent. For the first eight months of 1938 the carriers have failed to earn their interest and other fixed charges by $182,000,000, whereas in the corresponding months of 1937 they earned, over and above fixed charges, a net income of $62,000,000. Their freight traffic is running 20 per cent below the corresponding period of 1937. The rate of return on investment, during the first eight months of 1938, has declined almost to the vanishing point, averaging for those months only 0.99 per cent, a marked decline from the 2.56 per cent earned in the first eight months of 1937. (Tr. 200)

Indications are that the net financial results of operation for the year 1938 as a whole will be worse and lower than in any year since the World War, and lower even than the results of 1932 and 1933, when the economic depression hit the bottom. (Tr. 203)

Compared with the depression year of 1932, when the railroad employees took a voluntary deduction of 10 per cent from pay checks, the railroads are now hauling traffic at lower average revenues per unit of traffic; they are now paying higher taxes and higher prices for materials and supplies; and they are paying wages which average, in hourly earnings, 20 per cent higher. And yet the financial results of their operations for the first eight months of 1938 are as above briefly described and the rate of return on investment has practically vanished, having fallen to 0.99 per cent.

As will be shown in detail later, the carriers have exhausted all practicable efforts to relieve this disastrous condition by increasing freight rates and passenger fares and the Interstate Commerce Commission has authorized as much increase as, in its judgment, will produce additional revenues and has refused to authorize additional increases because, in its judgment, additional increases would not increase revenues but would drive traffic from the rails to competing forms of transportation, although it recognized that the increases it authorized would not produce the required revenues. As will also be later shown in detail, the carriers have exercised every possible economy consistent with continued safety and efficiency of operation.

2. The Carriers' 1938 Wage Reduction Notices, Negotiations and Mediation.

On May 12, 1938, the carriers served on their employees, here represented, formal notices in writing, as required by the Railway Labor Act, of their intention to reduce rates of pay 15 per cent on July 1, 1938. They requested their employees to give the matter national handling as was done last year. There were preliminary handling and negotiations between individual carriers and their respective employees and thereafter the eighteen labor organizations here represented by the Railway Labor Executives Association agreed to national handling. The Brotherhood of Railroad Trainmen refused to handle jointly with the other eighteen organizations but did agree to separate handling with the carriers on a national basis for trainmen. (Tr. 1616-1622)

However, immediately after the news of the May 12 notices was made public, and before either local or national negotiations began, the responsible heads of the railway labor organizations publicly, positively, and with the greatest vigor announced that the employees would not agree to any wage reduction whatsoever. And at the same time they broadcasted in the public prints equally positive and vigorous statements that they would call a nation-wide strike if the carriers persisted in their announced intention to reduce wages.

Thus the railway labor unions and their heads nullified in advance the effectiveness of all the machinery set up by the Railway Labor Act for adjustment of the dispute by negotiations and by mediation, committed themselves and their following to a thoroughly intransigent position and prejudged the case in their own favor before there was any presentation of facts and arguments in negotiation and mediation. There is nothing to indicate that they have ever at any time since altered their position one iota or have ever approached the tremendously important problem involved in the dispute with minds open to facts, argument, persuasion, or conviction.

But the forms and motions of the procedure set up by the Railway Labor Act were carried out. The Carriers' Joint Conference Committee met with the representatives of the eighteen labor organizations in Chicago on June 28 and with the representatives of the Brotherhood of Railroad Trainmen on June 30. On July 18, the national conferences with the Trainmen were resumed and continued until they terminated in no agreement on August 3. The Trainmen reiterated their original position and refused to consider any wage reduction. On July 20, the national conferences with the representatives of the eighteen organizations were resumed and continued until they terminated in no agreement on August 4. The eighteen organizations reiterated their original announcements and refused to consider any wage reductions. (Tr. 1622-1624)

On August 4, the Carriers' Joint Conference Committee, in view of the deadlock of the matter in handling between the parties, invoked the services of the National Mediation Board in connection with the dispute, as contemplated and authorized by the Railway Labor Act. Representatives of the eighteen labor organizations refused to join in the request of the carriers for mediation proceedings. The representatives of the Brotherhood of Railroad Trainmen renewed a request for mediation which they had previously filed with the Board in connection with the same matter. (Tr. 1624-1626)

On August 5, the National Mediation Board accepted the carriers' request for its services. Its members went to Chicago and began mediation proceedings on August 11 and continued them until August 31. The Board was unable to bring the parties to the controversy to agreement or to effect a settlement. The labor heads adhered steadfastly to their original platform. They would not consider agreeing to wage reductions. (Tr. 1626-1628)

3. Employees' Refusal to Arbitrate Controversy.

On August 31, as its last and mandatory duty under the terms of the Railway Labor Act, the Mediation Board in writing requested and urged the Carriers' Joint Conference Committee, the representatives of the eighteen labor organizations, and the representatives of the Brotherhood of Railroad Trainmen to submit the controversy to arbitration. *The Carriers' Joint Conference Committee promptly informed the Mediation Board of the willingness of the carriers to submit the controversy to arbitration. Both the representatives of the eighteen labor organizations and the representatives of the Brotherhood of Railroad Trainmen refused to submit the controversy to arbitration, taking the surprising position that for them even to agree to arbitration would be a concession with reference to the controversy.* (Tr. 144, 1628-1639)

With the positive refusal of the employees to agree to arbitration, which the carriers were willing to agree to, the National Mediation Board, on August 31, formally and in writing advised the parties that it had exhausted all efforts to mediate the controversy to a settlement and that "the Board's services have this day been terminated under the provisions of the Railway Labor Act." (Tr. 1640)

Under express provisions of the Railway Labor Act, during all this period, from May 12, the date of the initiating notices, to August 31, the date of termination of mediation proceedings, the hands of the carriers have been tied against self-help, the law forbidding any change

in rates of pay during the period of negotiation and during the period of mediation. The injunctive provisions of the law go even further and forbid any change in the status of wage rates for an additional period of thirty days following the formal termination of mediation proceedings, that is, thirty days beyond August 31, or until October 1, 1938. So, for a total period of practically five months, the procedures of negotiation and mediation contemplated by the law have preserved the wage rates at the 1937 increases above pre-depression levels and have restrained the carriers from making any reductions.

4. Strike Votes and Appointment of Emergency Board.

Immediately upon termination of mediation proceedings all of the labor unions involved called strike votes of their memberships on the question of a national rail strike to combat and defeat the proposed wage reduction. In the meantime, about the 15th of September, the individual carriers advised their respective employees in writing that the original notices of intention to reduce wages 15 per cent on July 1, 1938, which had been stayed by the processes of the law until October 1, would be put into effect by reduction of 15 per cent in wages and compensation of all employees involved in the present proceeding on October 1, at 12:01 a. m. (Tr. 1641-1643)

On September 26, the representatives of the eighteen labor organizations met in Chicago and publicly announced the results of their strike vote, showing a majority voting in favor of a nation-wide strike, and announced that such a strike would be made effective at 6:00 p. m., on September 30, unless the carriers should withdraw their wage reduction proposal. On the same date the representatives of the Brotherhood of Railroad Trainmen met in Chicago and publicly announced the results of its strike vote, showing a majority voting in favor of a nation-wide strike, and likewise announced the calling of a nation-wide strike of trainmen to be put into effect at 12:01 a. m. on October 1, unless the carriers should withdraw their proposal. (Tr. 1643-1644)

By these steps there has been brought to a head the very acute national emergency which has called this Honorable Board into existence. In such case of national emergency, the Railway Labor Act provides, in section 7:

> "*Emergency Board.* If a dispute between a carrier and its employees be not adjusted under the foregoing provisions of this chapter, and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President, who may thereupon, in his discretion, create a board to investigate and report respecting such dispute. Such board shall be composed of such number of persons as to the President may seem desirable: *Provided, however,* That no member appointed shall be pecuniarily or otherwise interested in any organization of employees or any carrier. The compensation of the members of any such board shall be fixed by the President. Such board shall be created separately in each instance and it shall investigate promptly the facts as to the dispute and make a report thereon to the President within thirty days from the date of its creation." (45 U. S. C. 160)

On September 27, 1938, immediately following the announcement by the labor unions of the calling of nation-wide strikes, the National Mediation Board, under the provisions of this section of the Act, notified the President of the United States in writing that this dispute was unadjusted and that, in its judgment, the dispute threatened substantially to interrupt interstate commerce to a degree such as to deprive the country of essential transportation service. On the same day, September 27, 1938, the President by proclamation created this Board for the purposes designated in the above-quoted section of the Railway Labor Act.

Upon the creation of this Board, a further injunctive provision of the Railway Labor Act, section 7, came into play and became effective, as follows:

> "After the creation of such board and for thirty days after such board has made its report to the President, no change, except by agreement, shall be made by the parties to the controversy in the conditions out of which the dispute arose."

Thus, assuming that this Board completes its investigation and makes its report to the President about the end of the thirty day period within which this must be done, the stay provisions of the statute, which have already frozen the wage rates at the present high levels from May 12, the date of the notices, to October 1, continue to freeze them at those levels for a still further period of approximately sixty days, or until about December 1, nearly seven months from the date of the original notices.

5. The Issues Before the Board.

What, then, are the issues upon which this Board is to find the facts, upon the merits of which it is to report to the Chief Executive? There are many detailed contentions of the parties. Facts covering a

wide range must be found. But the ultimate issues are exceedingly simple. They are:

> 1. Under all the facts and circumstances involved, is the carriers' wage reduction proposal reasonable and justified?
>
> 2. Under all the facts and circumstances involved, is the employees' threat of a nation-wide strike reasonable and justified?

Or, in absolute ultimate, the controversy may be said to raise one issue, which may be stated thus:

> Under all the facts and circumstances involved, what would be a fair and reasonable disposition of the pending wage controversy, with due regard to the condition, necessities and rights of both the carriers and their employees?

II.

THIS PROCEEDING IS A TEST OF THE SOUNDNESS OF A LAW WHICH HAS BEEN WIDELY PRAISED AS FAIR AND WHICH IS THE CULMINATION OF FIFTY YEARS OF FEDERAL LEGISLATION FOR PREVENTION OF INTERRUPTION OF INTERSTATE COMMERCE BY RAILWAY LABOR DISPUTES. A BRIEF NOTE ON THE HISTORY AND SOME GENERAL CONSIDERATIONS GOVERNING THIS PROCEEDING.

The tremendous significance of the appointment of the present emergency board lies in the fact that it is the first such board which has ever been appointed, throughout the fifty years covered by federal legislation in the railway labor field, to deal with an entirely national controversy, between substantially all major rail carriers and substantially all their employees, and raising a grave emergency, not merely local or sectional, but distinctly national in character.

The nearest thing to a national emergency board which has ever before been appointed was the Pullman Strike Commission, appointed by President Cleveland under the provisions of the Act of 1888 to investigate and report on the Pullman strike in 1895. But that was really a sectional dispute, largely centered in the state of Illinois. And that commission was actually appointed after the emergency there involved had already been averted and disposed of by the armed forces of the United States and by the injunctive powers of the federal courts. It was in truth an "after-the-fact-finding" commission.

Since provision for presidential emergency or fact-finding boards was revived and re-enacted by the Railway Labor Act of 1926, having been omitted from every federal statute in this field from the repeal of the Act of 1888 by the Erdman Act of June 1, 1898, until the enactment of the Railway Labor Act of 1926, there have been 16 presidential emergency boards appointed,[1] but they have all been appointed to investigate purely local or sectional disputes and emergencies

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[1] They are: *Brotherhood of Locomotive Engineers, et al., v. The Kansas City, Mexico & Orient Railway System* (1928); *Order of Railway Conductors and Brotherhood of Railroad Trainmen v. Atchison, etc., R. Co., et al.* (47 western roads) (1928); *Brotherhood of Locomotive Engineers, et al., v. Texas & Pacific Railway Co.* (1929); *Shop Crafts v. Louisiana & Arkansas Ry. Co.* (1931); *Brotherhood of Locomotive Engineers, et al., v. Louisiana & Arkansas Ry. Co. and Louisiana, Arkansas & Texas Ry. Co.* (1932); *Brotherhood of Locomotive Engineers, et al., v. Kansas City Southern Ry. Co., et al.* (1933); *Brotherhood of Locomotive Engineers, et al., v. Louisiana, Arkansas & Texas Ry. Co. of Texas* (1933); *Brotherhood of Locomotive Engineers, et al., v. Mobile & Ohio R. Co. and its receivers* (1933); *Brotherhood of Locomotive Engineers, et al. v. Southern Pacific Lines (Texas and Louisiana Lines)*. (1933); *Brotherhood of Locomotive Engineers, et al., v. Denver & Rio Grande Western R. Co.* (1934); *Brotherhood of Locomotive Engineers, et al., v. Delaware & Hudson R. R.* (1934); *Brotherhood of Locomotive Engineers, et al., v. Western Pacific R. Co.*, (1936); *Brotherhood of Locomotive Engineers, et al., v. Chicago Great Western R. Co.* (1937); *Brotherhood of Locomotive Engineers, et al., v. Southern Pacific Co. (Pacific Lines) and Northwestern Pacific R. Co.* (1937); *Brotherhood of Railway & Steamship Clerks, et al., v. Pennsylvania R. Co., et al.* (1937); *and Brotherhood of Railroad Trainmen v. Pacific Electric Railway Co.* (1937).

1. A Brief History of the Legislation and of Wage Movements.

For exactly fifty years the Federal Government has been endeavoring to solve the problem of the prevention of interruptions of interstate commerce by strikes growing out of railway labor disputes and has been experimenting with legislation having that end in view. The history of this legislation and of its practical operation is highly interesting and significant for the purposes of this proceeding. This board is appointed and sits against the background and in the light of all that history. We shall now give a very brief summary and note on this history. Rather than burden the brief with elaborate citations of statutes, source materials and authorities, which would have to be sprinkled lavishly throughout every paragraph, we append in the footnote hereto[1] a sufficient bibliography to support what is said in this summary and to enable any one interested to pursue the historical details as much further as may be desired.

a. Act of 1888, Erdman Act, Newlands Act, and Adamson Law.

The first statute in this field was enacted just fifty years ago, the Act of October 1, 1888. It provided for two methods of settlement of railway labor disputes: (1) purely voluntary arbitration, which either party had a right to refuse, and which, if agreed to, resulted in an award having no binding or legal effect on the parties but which was only addressed to the forum of public opinion; (2) appointment of a presidential emergency commission to investigate and report on the merits of a particular controversy threatening a national emergency, a provision not essentially different from the provisions of the present law under which this board is appointed. During the ten years the Act

[1] Basic groundwork will be found in various writings of former United States Commissioner of Labor, Dr. C. P. Neill, Bureau of Labor Bulletin No. 98, case 4, case 28, case 29, case 40, etc. An important source work is *Railroad Labor Arbitrations, Report of the United States Board of Mediation and Conciliation on the effects of Arbitration Proceedings upon Rates of Pay and Working Conditions of Railroad Employees*, Senate Document No. 493, 64th Cong., 1st Sess. (1916).

A full, authoritative and scholarly review of the whole field, from the Act of 1888 until after the enactment of the Esch-Cummins Law (Title III of Transportation Act, 1920) is contained in the work by Clyde Olin Fisher, A. M., Ph. D., Associate Professor of Economics, Wesleyan University, (U. S. Department of Labor, Bureau of Labor Statistics, Bulletin No. 303) entitled *"Use of Federal Power in Settlement of Railway Labor Disputes."*

For the whole period beginning with federal control of railroads and down to the enactment of the Railway Labor Act of 1926, see the monumental and definitive work by H. D. Wolf, *The Railroad Labor Board* (University of Chicago Press, 1927). This work overlaps Bulletin No. 303 (Fisher, *op. cit.*) by covering in an introductory, but very thorough way the period of federal control and then takes up in the utmost detail where Fisher left off, with the passage of Transportation Act, 1920, and covers fully the period down to the passage of the Act of 1926. These two works will give all necessary citations to source materials.

For the legislative history leading to the passage of the Amending Railway Labor Act of 1934, see the hearings before the Senate Committee on Interstate Commerce, April 10 to 19, 1934 (73rd Cong. 2nd Sess., Hearings on S. 3266), and the hearings before the House Committee on Interstate and Foreign Commerce, May 22 to 25, 1934 (73rd Cong., 2nd Sess., Hearings on H. R. 7650).

of 1888 was on the statute books, no use was ever made of its provision for voluntary arbitration and only one partial use was ever made of its emergency commission provision, that in connection with the Pullman strike above referred to.

The next federal statute in this field was the Erdman Act of June 1, 1898. It applied only to employees engaged in the operation of trains in interstate commerce. It carried substantially the same provisions for voluntary arbitration as had the Act of 1888. It omitted the provision for presidential emergency commissions. But it contained a new character of provision not contained in the earlier law, a provision for a board of "mediation and conciliation." This was the germ from which have grown the functions of the National Mediation Board under the present law. It was the provision of the Erdman Act of which most use was made.

The next enactment in this field was the Newlands Act of July 13, 1913. It really was not a new piece of legislation but was a mere amendment and amplification of the Erdman Act, containing the same two essential provisions, arbitration and mediation and conciliation, but with certain changes in detail. This act remained on the statute books un-repealed (though in a state of "innocuous desuetude" from the beginning of the period of Federal Control) until it was repealed by the Railway Labor Act of 1926.

The next law in the railway labor field did not repeal or change the Newlands Act but was passed by Congress, under threat of a nationwide strike and at the urgent request of President Wilson, as a direct legislative regulation of the subject-matter of a particular dispute. It was the Adamson Law of September 3, 1916, in form a requirement of an eight-hour day for train and engine service men, but in substance an increase in their rates of pay by requiring pay for an eight-hour day at the same rates as previously paid for a ten-hour day. It made no change in the statutory machinery for the handling of railway labor disputes.

No use was made of the Newlands Act provisions during the period of federal control of railroads, because, under the Federal Control Act, the Director General of Railroads took over the function of regulating wages and working conditions on the federally controlled and operated railroads.

b. Wage increases under Federal Control.

Immediately prior to the taking over of the railroads for federal control and operation there had been a widespread movement for increases in wages of railroad employees, predicated largely on the rising cost of living and the general increases in wages in outside

industries resulting from world war conditions. One of the earliest acts of the Director General was the appointment of a Railroad Wage Commission, popularly known as the "Lane Commission," headed by Franklin K. Lane, Secretary of the Interior and former Interstate Commerce Commissioner, to investigate these demands of railway labor for wage increases and to make recommendations.

On April 30, 1918, the Lane Commission made its report, in which it recommended substantial increases on a sort of sliding scale, the increases to be relatively greater for the lower paid than for the higher paid groups, in order to wipe out unfair disparities. These recommendations for increases were largely based on the increased cost of living and the resulting reduction of the purchasing power of the dollar, or "real wages," which had occurred since the pre-war period. On May 25, 1918, the Director General, by his General Order No. 27, granted the increases recommended by the Lane Commission, with certain minor variations. The application of the increases to the many classes of employees was so intricate that many supplements, addenda, and interpretations to General Order No. 27 had to be issued to deal with particular rates and classes and to cure particular disparities. (Tr. 1663-1664)

It was estimated that the annual increase in payrolls chargeable to operating expenses caused by General Order No. 27 and its supplements had amounted to between nine hundred million and one billion dollars. So substantial were these increases of 1918 that average annual compensation per employee rose from $1,003.81 for 1917, the year prior, to $1,485.89 for 1919, the year subsequent. (See Carriers' Exhibit 41, witness Monroe.)

The last of the supplements to General Order No. 27, granting increase in wages, was issued in the early months of 1919. The Director General at that time announced that this action completed the "war cycle" of wage increases and that any further increases would "have to be considered in the light of the new conditions."

After the armistice, and when the urge of patriotism had lost its controlling force, there were, early in 1919, a number of unauthorized strikes on the railroads growing out of further wage increase demands. President Wilson, through the Director General, refused to order advances in wages until facts should be available on which to determine whether or not the then cost of living and price levels were to be permanent or whether the Government's efforts to reduce them should succeed. Some modifications, however, were made in certain wage rates to iron out inequalities.

c. Title III, Transportation Act, 1920.

Transportation Act, 1920, was the next legislative step in this field. It provided for the return of the carriers to private control, made profound changes in the Interstate Commerce Act, and, by its Title III, effected the next legislative step in the regulation of railway labor disputes. It did not repeal the old Newlands Act, but, as a practical matter, that Act became a dead letter. Title III of the Transportation Act required conferences between men and managements and every reasonable effort to adjust disputes. It provided for the creation of labor adjustment boards by voluntary agreement, with jurisdiction to determine grievances. It created, however, a new machinery for the handling of disputes regarding rates of pay, rules and working conditions, setting up a Railroad Labor Board of nine members, three representing the railroads, three representing railway labor, and three representing the public. This Board was given broad jurisdiction to determine such disputes and also to adjust grievances and other disputes which could not be settled by the parties or by the authorized voluntary adjustment boards. The adjustment boards had no jurisdiction over any disputes concerning wage rates.

Title III set out definite criteria to be applied by the Labor Board in the determination of fair wages and reasonable working conditions. It provided that, "In determining the justness and reasonableness of such wages and salaries or working conditions the board shall, so far as applicable, take into consideration among other relevant circumstances:" the following—

(1) The scales of wages paid for similar work in other industries;
(2) The relation between wages and the cost of living;
(3) The hazards of the employment;
(4) The training and skill required;
(5) The degree of responsibility;
(6) The character and regularity of the employment; and
(7) Inequalities in wages or of treatment, the result of previous wage orders or adjustments.

Disputes involving further demands for increases in wages, pending and deferred to the end of federal control, came within the jurisdiction of the Railroad Labor Board as soon as it was organized under the provisions of Title III of the Transportation Act.

d. Railroad Labor Board Decision No. 2—The 1920 wage increases.

The long-standing controversy arising out of these demands for further increases was promptly brought before the Railroad Labor Board and it made a general case, which resulted in the further general

wage increases of 1920. By its Decision No. 2, the Labor Board granted increases ranging from 12.5 per cent for supervisory forces to 26.2 per cent for stationary engineers and firemen. For employees as a whole, these increases amounted to approximately 22 per cent. They were granted largely on the basis of further increases in the cost of living since the Director General's General Order No. 27 and the supplements thereto, which the Board found had thrown railroad wages below the pre-war standard of living of railroad employees. The Board, however, stated that it also took into consideration all the seven criteria set up by the Transportation Act and, "among other considerations," as required thereby, that it also considered the effect that its decision might have on other wages and industries, on production generally, the relation of railroad wages to the aggregate of transportation costs and requirements for betterments, together with the burden of railroad transportation charges on the entire people. It also considered the fact that railroad employment was usually more regular, and the character of the work more desirable, than in outside occupations. (See Tr. 1654-1655)

The Board estimated that the 1920 wage increases effected by Decision No. 2 would impose an addition to the payrolls of the railroads of approximately $558,000,000 a year. They were about 75 per cent of the full increases demanded by the employees. As the result of these Decision No. 2 increases, average annual earnings of railroad employees rose sharply from $1,485.89 in the year 1919 to $1,820.12 in 1920. (Carriers' Exhibit 41, witness Monroe)

e. Decision No. 147—The 1921 decreases.

As it turned out, the rising cost of living had reached its peak and had already begun to turn down by the time Decision No. 2 became effective. (See Carriers' Exhibit 50, witness King). The depression of 1920-1921, beginning in the summer of 1920, brought lowered general business and numerous industrial enterprises began to cut wages and reduce forces. By the beginning of 1921 total unemployment of 3,473,466 men in the United States was reported. Railroad revenues were high, but expenses were disproportionately high. Taxes were the highest previously known. But the tremendous increase in wages due to Decision No. 2 was largely responsible for the extremely high operating expenses. Net operating income was the smallest since the Commission began keeping records in 1888. Despite increases in freight rates of from 25 to 40 per cent authorized by the Interstate Commerce Commission in July, 1920, the operating ratio of the railroads rose to 94.32 for the year, the highest ever known. During the last three months of 1920 the railroads were thus faced with a serious

financial stringency. There were only three possible alternatives for their relief: further advance in freight rates; greater volume of business; or reduction in operating expenses.

Business was already bearing as high freight rates as it could stand and there was no immediate prospect of increase in general business prosperity or railroad traffic, so reduction of operating expenses seemed to be the only feasible remedy. After much preliminary handling, several carriers appealed to the Labor Board for wage decreases and, on April 6, 1921, the Board, foreseeing numerous such applications, made a general case as had been done in the proceeding in which Decision No. 2 was rendered.

The case was decided by the Labor Board by Decision No. 147, dated June 1, 1921, effective July 1, 1921, and resulted in the 1921 wage decreases. The Board found that there had been a decrease in the cost of living since July of the preceding year and a corresponding decrease in the scales of wages for similar work outside. It asserted again that it had considered all the criteria set up by Title III of the Transportation Act. It granted wage reductions averaging 12.2 per cent. The Board estimated that the wage reductions made effective by Decision No. 147 would bring about an annual decrease in operating expenses of approximately $378,000,000. Addenda to Decision No. 147 extended the wage reduction movement of 1921 to practically all classes of railroad labor. A partial reflection of these 1921 wage reductions is seen in the fact that average annual earnings of railroad employees declined from $1,820.12 in 1920 to $1,666.28 in 1921. (Carriers' Exhibit 41, witness Monroe) (See also Tr. 1655-1656)

f. The 1922 decreases, Decisions 1028, 1036 and 1074.

Decision No. 147 had eliminated less than two-thirds of the increases granted by Decision No. 2. The downward trend of prices and living costs which had its beginning in 1920 continued throughout 1921, (See Carriers' Exhibit 50, witness King) carrying with it wage decreases in practically all lines of industry. Shippers all over the country, hard hit by the depression, were demanding lowered freight rates. The carriers answered that no reductions could be made in freight rates unless operating costs were cut down and that, since labor costs constituted such a large percentage of railway expenses, the bulk of the reduction must be made in the payroll. The carriers inaugurated a plan for further wage reductions to remove the remainder of the Decision No. 2 increases for train and engine service (about 10 per cent) and to reduce all other classes to the going rates for such labor in the several territories. A number of appeals reached the Labor Board and it again consolidated the whole matter into a general case.

On May 28, 1922, the Labor Board announced Decision No. 1028, reducing wages of maintenance-of-way employees. On June 6, Decision No. 1036 announced reductions for shop crafts. The final decision of this whole series, Decision No. 1074, reducing wages of clerical and station forces, stationary engine and boiler-room employees, signal department employees, and others, was issued June 10. All decisions in this series of 1922 wage reductions were to become effective July 1, 1922. They were all predicated largely on the continued decline in the cost of living and on the continued general business depression and the resulting bad financial condition of the railroads. Effects of the 1922 wage reductions, accumulated with the effects of the 1921 reductions, are reflected in the fact that the average annual earnings of railroad employees declined slightly from $1,666.28 in 1921, to $1,623.29 in 1922, to $1,617.11 in 1923, and to $1,613.47 in 1924. (Carriers' Exhibit 41, witness Monroe)

g. The Railway Labor Act of 1926.

As a result of the wage decreases of 1921 and 1922, the employees became entirely dissatisfied with the Labor Board and with Title III of the Transportation Act. The ultimate result was that the executives of the carriers and the executives of railway labor collaborated on a program for new legislation and on January 7, 1926, presented and explained to President Coolidge an agreed draft of a new law. It was introduced in both Houses of Congress, was known as the Watson-Parker bill, promptly passed both houses, became law on May 20, 1926, and was officially entitled the Railway Labor Act. It repealed Title III of the Transportation Act and also repealed the practically moribund, but theretofore unrepealed, Newlands Act.

The Railway Labor Act of 1926 is the basic framework of the present law, with certain minor amendments written into it by the Emergency Transportation Act of 1933 and with certain major changes written into it by the amending Railway Labor Act of 1934.

By the Act of 1926 there was set up a machinery which was really a combination of various provisions found in earlier legislation. Notably it revived and re-enacted, with some difference in details, substantially the provision of the original Act of 1888 for the appointment of presidential emergency boards. In case of a dispute between a carrier or carriers and employees, five different steps were made available for use in restoring peace and in preventing interruption of commerce. They were: (1) conferences between the parties; (2) appeal to a local or regional board of adjustment; (3) recourse to the permanent Board of Mediation; (4) voluntary submission of the controversy to a temporary board of arbitration; (5) the establishment of an emergency board of investigation by the President to investigate and report on a particular controversy threatening an interruption of commerce.

h. 1933 and 1934 Amendments to the Railway Labor Act.

There were certain new provisions for the protection of labor and its right of self-organization and selection of representatives and these protections were enlarged and made more specific by the amendments enacted by the Emergency Transportation Act of 1933 and by certain provisions of the Bankruptcy Act of that year.

The next and final step in this fifty years of legislation was the amending Railway Labor Act of 1934, which became law June 21, 1934. It wrote vital and important changes into the law. The principal were these:

A new forum, the National Railroad Board of Adjustment, was set up, in lieu of the local or regional adjustment boards provided for by the Act of 1926, to have exclusive jurisdiction of all disputes growing out of grievances or out of the interpretation or application of existing agreements. It is unnecessary here to discuss the complications incident to this Adjustment Board and its jurisdiction, since it deals with a class of disputes entirely different from the controversy now before this Honorable Board.

The Act of 1934 contained a new rule for determining the electorate for representatives of employees, that—

> "The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act."

It contained no definition of what should constitute a "craft or class" but it conferred upon the new National Mediation Board, created in lieu of the Board of Mediation provided for in the Act of 1926, a new jurisdiction never before provided for, that of deciding any dispute among employees as to who is their authorized representative.

The mediation jurisdiction of the Mediation Board, in disputes concerning rates of pay, rules and working conditions (a jurisdiction wholly distinct from that of the National Adjustment Board regarding grievances and interpretation and application of existing agreements) was substantially left the same as had been the functions of "mediation and conciliation" under the Erdman Act and the Newlands Act and as had been the function of the Board of Mediation under the Railway Labor Act of 1926. The arbitration provisions were left the same as in the Act of 1926.

The judicial or fact-finding function of a presidential emergency board was continued unchanged as in the Act of 1926, substantially as originally provided for in the first Act of 1888, having been omitted from all laws from the passage of the Erdman Act in 1898 until the passage of the Railway Labor Act of 1926.

1. Upward trend of earnings since 1924.

From 1924 until 1926 the trend of employees' annual earnings continued upward due largely to increases in rates of pay to some classes of employees granted by decisions of the Labor Board, and to agreements between a number of individual railroads and their employees.

Carriers' Exhibit No. 41, Witness Monroe, shows that this upward trend in earnings continued after the passage of the Railway Labor Act in 1926 through the year 1929, during which year the earnings reached a level of $1,744. The steady rise of earnings during this period was due in great part to increases in rates of pay to practically every class of employees under the various procedures set up by the Railway Labor Act.

Due to the depression, the earnings began to drop in 1931. In 1932 the decline became much sharper because of the fact that near the beginning of that year the employees voluntarily agreed to a 10 per cent deduction from their pay checks. This downward trend of earnings reached its lowest point in 1933, the 10 per cent deduction still being in effect.

Beginning with 1934, however, the trend shown by Exhibit 41 started upward. This was due, to a great extent, to elimination of part of the 10 per cent deduction which took place in the early part of 1934. In 1935 the upturn was much sharper. In that year there was a complete elimination of the balance of the 10 per cent deduction. The trend steadily continued upward thereafter, reaching a level of $1,781 in 1937, which, it will be noted, was considerably above the 1929 level.

Due to an increase in rates of pay to all employees of approximately 8 per cent in the latter part of 1937, the earnings for the first six months of 1938 were considerably higher than in 1937, being $918.88, which, on an annual basis, would equal $1,837.76, by far the highest level of all time. And it will be remembered that this represents actual money and does not take into consideration the increased purchasing power of the actual money due to the decline in cost of living, which we shall discuss later.

This rapid glance at the history of federal legislation in the field of railway labor disputes and of the operation of the various laws will, we hope, serve to illuminate the historical background out of which the present controversy arises and in the light of which the present Board is appointed and sits.

2. This Proceeding is a Test of the Soundness of the Railway Labor Act.

Practically all litigated wage movements in the past, except the wage reductions of 1921 and 1922 by the Railroad Labor Board, have resulted from wage increase demands of the employees, that is, have been cases in which the employees have been plaintiffs. When costs of living have advanced, in cycles of rising prices, the employees have consistently used the rising cost of living as the basis for demands for wage increases. The rising cost of living was the fundamental ground for the enormous wage increases by the Director General and for the increases of Decision No. 2 of the Labor Board. When railroad and general business has been prosperous, and the ability of the industry to pay higher wage rates has been more or less demonstrable, the employees have consistently used that fact as the basis for demands for increases. But when reverse movements in economic trends have been urged against wage increases or in favor of reductions, the employees have always strenuously argued, as they do here, that lowered costs of living are no answer and that the ability or inability of the industry to pay wage rates should be given no consideration. In the face of downward economic trends such as we are now facing, the labor unions always shift from consideration of costs of living and ability of the industry to pay to arguments based upon the necessity for preserving a "living wage," upon the asserted necessity of maintaining consumer "purchasing power" by maintaining high wage rates, and to *ad hominem* arguments charging the railroads with overcapitalization, "banker control," and spoliation.

In the present case, they are forced by the inescapable logic of events and economic trends to go even further and to take the square position that bondholders have no right to the small rate of return guaranteed them by their secured investments which have financed and enabled the creation of the great railroad industry that gives its employees their livelihood; that the stockholders, the owners of the properties, have no right to any return on their investment; that capital has no rights which must be respected; and that however unable the railroad industry is to meet its operating expenses, taxes and fixed charges, the employees have the inalienable right to retain whatever scale of wages and compensation they have been able to achieve under different and more prosperous conditions and by their constant demands for increases based on other conditions.

This is said in no spirit of criticism of the railway labor unions and their leaders. The labor leaders have their job to perform and they do that job with magnificent ability. Their job is to get constantly more and more for their men, to move constantly forward, never back-

ward. As they frankly state, the labor organizations are geared only for forward motion, they have no reverse gear equipment. When they secure advances for their men in times of prosperity or of high costs of living, their organization is designed to operate with an automatic ratchet effect, to lock the advance against any reduction in subsequent times of depression, and then to start from that high level for further raises in subsequent times of prosperity. They are necessarily, from what they believe to be their own interests, "one-way" organizations.

But the law of the United States regulating railway labor relations is not a "one-way" law. It is not designed to further the interests of the employees or to further the interests of the carriers. It is designed to further the interests of the public and to further them by protecting and providing a remedy for meritorious demands of both employees and employers.

In a peculiar way the present proceeding is a severe test of the soundness of the Railway Labor Act, a law which has been widely praised as fair and as a model for the regulation of labor relations, a law the result of fifty years of legislative experimentation and effort to solve the problem of industrial peace on the railroads and to prevent interruptions of interstate commerce in the public interest. The employees' theory in this case is essentially an attempt to have applied, in defense of their present high wage rates, a general political or academic philosophy against wage reductions, regardless of the conditions of general and railroad business, regardless of their present earnings as compared with their earnings under prior and more favorable conditions, regardless of their earnings as compared with the earnings of the other major classes of wage earners and citizens and with their respective trends, and an attempt to keep railroad employees' wage rates up at the present excessively high levels by the mere momentum of past movements which have pushed them to those levels under other and more favorable conditions. If such a theory is to prevail against a meritorious case presented by the carriers for wage reduction, then the law will have proved to be indeed a "one-way" law, useful only in aid of the employees when they are plaintiffs, and it will have failed to accomplish that preservation of the public interest for which it was intended.

3. Some General Considerations Governing This Proceeding.

The question at issue in the controversy between the parties here is the general level of wages paid by the railroad industry. In the very nature of the case this Board could not undertake to try out in this proceeding the question of whether any individual railroad employee is paid too much or too little, as compared with others, or the question

whether any one class or group of employees is out of line with others and no such question is at issue between the parties. The reasons upon which we rely as justifying and demanding a reduction are reasons of application to the industry generally and to the employees generally.

It must be assumed that through the various processes of prior wage adjustments substantial comparative equality of treatment has been achieved as between classes of workers. This must have been true in 1929 when the height of pre-depression wage levels was reached. Since then, wage changes have been general, horizontal, and by percentages. In 1932 the employees voluntarily accepted a horizontal 10 per cent deduction from pay checks. No question of differentials as between classes was considered in connection with that deduction. When that deduction was restored in 1934 and 1935 it was again restored on a horizontal, gradual, equal percentage basis. When the wage increases of last year were agreed to they were again put in on a horizontal basis, without discrimination between classes of employees. The technical difference between the 40 cents a day increase for the non-operating groups and the 5½ cents an hour increase for the train and engine service groups was not by reason of any intention to discriminate or differentiate between the two groups, but was the result of a rough-and-ready effort to accord the two groups substantially equal treatment in connection with two separate settlements with the two groups.

If it were not possible in a case like this to deal with a general, over-all level of wages and with all employees involved alike, without distinctions between classes, a board of this kind would "be reduced to administrative paralysis." *New England Divisions Case*, 261 U. S. 184, 198.

What is a fair level of railroad wages cannot be measured in a vacuum. It is not a question of legal or ethical abstraction. It must be answered in the light of general business conditions, in the light of the conditions of the railroad business, in the light of the condition of the employees as compared with their former conditions and as compared with the general conditions of other workers and wage earning classes in the United States.

The nature of the problem was philosophically stated by the Lane Commission in its report of April 30, 1918, when it said:

> "To ask of a man, 'What wages should you in justice receive?' is to ask perhaps the profoundest of all human questions. He is at once compelled to an appraisement of his own contribution to the general good. He must look not selfishly on his own material needs, but take a far view of the needs of those dependent upon him. He must go into the whole involved problem of his relationship with his fellows, and to answer the question aright he must in the end come to a judgment which will be nothing less than a determination

of what policy or plan of wage adjustment will make for the permanent well-being of the State." (p. 7)

The nature of the problem has never been more aptly stated and that statement came down to the ultimate test of the public interest.

In an interesting book, ***Right and Wrong in Labor Relations***, by Dr. William M. Leiserson, Chairman of the National Mediation Board, (University of California Press, 1938), which was a foundation lecture delivered at the University of California, the same philosophical concept of the problem was suggested. It was there said (pp. 67-68):

> "For there is no standard of right and wrong by which wages and earnings may be determined. What income working people *ought* to receive in return for their labor is a question that cannot be answered by any ethical judgment."

In an article in Barron's Financial Weekly, issue of October 3rd, 1938, page 9, Interstate Commerce Commissioner Joseph B. Eastman, in a discussion of a number of questions regarding the present conditions and problems of the railroads, had the following to say in answer to the question, "Do you believe the proposed 15% wage cut is justified? Briefly, why?"

> "I do not know whether a 15% or any other wage cut is justified, not having investigated the matter thoroughly.
>
> "There are, of course, many angles to this question. At one time in my history I represented labor unions in three successive and rather important wage arbitrations in the electric railway industry. Apart from the minimum wage which should be paid for any useful work, I could discover no precise abstract standard which could be applied in determining what is a just and reasonable wage.
>
> "It is like, but worse than, determining what is a just and reasonable freight rate.
>
> "It seems to me, on the whole, a practical rather than a theoretical question. The problem is to determine the wage which will produce the best results for the worker, including long-run as well as immediate results. The ability of the industry to pay and its interrelation with other industries in the general economy must be taken into consideration in this connection. It is quite possible to win wage victories which in their results prove hollow or worse.
>
> "If the railroad companies and their employees are not able to agree on this matter of wages, I should like to see it made the subject of a thorough investigation by disinterested men in whom the country will have confidence. Particularly I should welcome such consideration of the mileage plan of paying train-service employees under modern conditions of high-speed operation in both passenger and freight services."

It is, we think, universally recognized that the purchasing power of the worker's money income determines, more than anything else, the standard of living of himself and his family, the extent to which he can have the comforts and some of the luxuries enjoyed by other classes, and his capacity intelligently and progressively to go about improving his material conditions. And measurement of the trend of purchasing power, or "real wages," involves, obviously, the double relationship of relative changes in the amount of actual money which the workers have received for their work as compared with changes in the cost of living. And it is generally recognized that the use of index numbers is essential to appraisal of such comparative trends.

Again the euphonious talk about "a living wage" or about an "American standard of living" or about a "cultural standard of living" or about "health and decency standards" is talk about concepts for which there is no absolute standard of measurement. What these and like phrases mean necessarily comes back to some substantive and pre-conceived standard in the mind of him who is talking.

After all, the whole question comes down in last analysis to the query as to what is best in the public interest. And in considering the public interest we must give basic consideration to the condition of the railroad industry, to general business conditions, to the condition of the employees now as compared with their condition in prior times of better business, and to their condition and the trend of their condition as compared with those of the other major classes of workers in the country.

III.

THE PRESENT FINANCIAL CONDITION OF THE RAILROAD INDUSTRY OF THE UNITED STATES IS DESPERATE AND MUST BE REMEDIED FOR THE PROTECTION OF THE PUBLIC INTEREST AND FOR THE PRESERVATION OF A SOUND TRANSPORTATION SYSTEM. NO IMMEDIATE RELIEF IN UPTURN OF BUSINESS IS IN PROSPECT.

The present, desperate financial condition of the railroads is beyond dispute and is not disputed. There is some dispute as to what are the fundamental causes of this condition. There is some dispute as to what the immediate trend is now and has been since the wage reduction notices were served in May of this year. We shall show from the evidence in this case that the condition is desperate; that the fundamental causes of that condition, aside from high, new, and unusual taxes, high wage rates, and high costs of materials and supplies, are the general business depression since 1929 and the concomitant development and extension of new and increasingly effective forms of competition. And we shall further show that there is nothing in present trends or in trends since the first of this year to give any prospect of immediate relief from the situation. We shall further show that it is a matter of most vital importance for general business recovery and for the public interest that immediate relief shall be had by the railroads and that they be given every reasonable opportunity to be restored to a sound financial basis.

1. The Splawn Report and Its Significance.

The most recent and the most authoritative governmental document bearing on the present desperate plight of the railroads is the Splawn Report, transmitted to Congress by the President on April 11th of this year. (75th Cong., 3rd Sess., H. Doc. 583.) There is no need to go back forty-five years ago, as counsel for the employees did in opening statement (Tr. 132-133), to find a statement by the Commission as to the condition of the railroads and the causes thereof. Here we have a statement made this very year, and it was concurred in by every member of the Commission except one who was absent from the city. In his message to Congress, the President expressed the view that immediate legislation should be passed at that session, "in order to prevent serious financial and operating difficulties between now and the convening of the next Congress."

All members of the Board have read the Splawn Report, have followed it through testimony and arguments, and are thoroughly familiar with it. It is the latest and most authoritative study of

the present condition of the railroads and of their desperate need for immediate relief from that condition in the interest of the public. It very fully reviews the operating and financial statistics of the railroads beginning with the depression in 1929 and particularly the results for 1937, the sharp decline between 1937 and 1938 and the trends for 1938 as apparent at the time the report was written. It is clear from the report that the fundamental causes of the present desperate condition of the railroads, aside from high, new and unusual taxes, high wage rates, and high costs of materials and supplies, are the general business depression since 1929 and the extraordinary, concomitant development and extension of new and increasingly effective forms of competition. It very completely disposes of the assertions that overcapitalization, excessive fixed charges, or excessive dividend payments are responsible factors. It clearly shows that even the present low opperating results of the carriers have been attained only by extreme efficiency and economy and even by undermaintenance to the extent of skimping.

We shall have occasion to quote from the Splawn Report in connection with separate subjects hereinafter discussed. For the moment, we content ourselves with quoting what that Report has to say with reference to the effect on the desperate condition of the railroads of the wage increases of 1937 and the immediate relief which could be obtained by reduction of wage rates. On pages 32 and 33 of the Report, it is said:

> "Representations from various sources have been made to your committee, both to the effect that the wages of railroad employees should be reduced, at least for a temporary period, as a means of affording quick financial relief to the railroads, and to the effect that such a reduction is not warranted and also might have the unfortunate result of precipitating like reductions by other large industries.
>
> "In 1932, when the railroads were in financial difficulties similar to those which they are now experiencing, although less serious in some respects, they were able to reach an agreement with their employees for a temporary deduction of 10 per cent from wages which was of very material assistance. This deduction was in part eliminated, beginning in 1934, but not wholly until April, 1935. At the present time, wages are higher than they were in 1932, when this deduction was agreed upon, by about $130,000,000, based on the 1936 level of employment. The actual pay roll at present, however, is probably no greater, and may be less, than it was in 1937, when the increased wage rates were agreed upon, because of the large number of employees who have been laid off.
>
> "The railroads are now engaged in conferences with their employees for the purpose of determining whether, in view of the financial emergency, an agreement can be reached for a temporary

deduction from wages like that which was agreed to in 1932. *Such a wage deduction would be a means of very definite and positive financial relief to the carriers. In this respect it differs from an increase in freight rates or passenger fares, the actual results from which are always problematical, owing to the possible effect on traffic.*

"The policy of the law, as reflected in the Railway Labor Act, is to permit the railroads and their employees to determine matters of wages and working conditions by the process of mutual negotiations, with the National Mediation Board available for the purpose of mediation or to set in motion, with the consent of the parties, processes of arbitration. Provision is also made, in the event of an emergency, such as an impending strike, for the appointment by the President of a fact-finding board. This being the policy of the law, your committee does not feel justified in expressing an opinion either for or against a wage reduction or temporary deduction, and in any event it would be inappropriate for us to express such an opinion without fully hearing both the managements and the men. We are confident that both parties wish to be fair in the pending negotiations, and in reaching their conclusions will take into consideration all relevant matters, including the direct and indirect consequences to the railroads and their operations and to both the employees who are now in service and those who have been laid off." (Italics ours)

2. The Critical Condition of the Railroads.

The Splawn Report is strong official confirmation of the testimony which we have offered in this case through Dr. Julius H. Parmelee, Director of the Bureau of Railway Economics of the Association of American Railroads. We do not quote statistics regarding financial operations and results from the Splawn Report because the Board is familiar with what was there said and because Dr. Parmelee's testimony gives the full details from official and recognized statistics and brings them up to the latest available date in 1938.

The present financial condition of the railroads of the United States is significantly shown by the fact that more than 30 per cent of the railway mileage is now in the hands of receivers or trustees in bankruptcy under the courts. Stated in terms of gross revenues, this 30 per cent of the railroad mileage represents between 22 and 23 per cent of all the carriers in importance. This is the largest percentage of railroad mileage which has ever been in the hands of the courts in the history of American railroads. (Tr. 199, Carriers' Exhibit No. 12, witness Parmelee.)

Carriers' Exhibit No. 2, witness Parmelee, is a key exhibit to be kept in mind throughout the discussion of the present condition of the railroads and the trends of their conditions throughout a long period of years, pre-war, post-war, and depression. The chart at the left of

that exhibit shows the whole story from 1911 to the year ended June 30, 1938, with reference to total operating revenues, operating costs and taxes, and the steadily declining margin between them; that is, the steadily declining net railway operating income. The chart at the upper right hand corner gives the story for the same period as to the declining rate of return, which we shall discuss again in a moment. The chart at the lower right hand corner gives the story for the same period as to net income after fixed charges, with its precipitous decline from a net income in 1929 to a large deficit in 1932, and with deficits in every year since except 1935 to 1937.

On all three of these charts extreme significance lies in the precipitous decline between 1937 and 1938 in net railway operating income, in rate of return, and in net income or deficit after fixed charges. Carriers' Exhibit No. 3, witness Parmelee, gives in figures the official statistics upon which the charts of Exhibit No. 2 are based.

Following seven lean years of financial returns, 1931 to 1937, the industry this year has experienced another very serious depression. During the first eight months of 1938 ending August 31, total operating revenues have been less by 20 per cent than they were during the same eight months of 1937. Net railway operating income, after operating expenses and taxes, declined for this period 62 per cent under the same period for 1937. The carriers during these same eight months failed to earn their fixed charges by $182,000,000, although during the corresponding period of eight months in 1937 they had income above fixed charges of nearly $62,000,000. (Tr. 200)

The rate of return on investment, value of their road and equipment as set up on their books, plus cash and materials and supplies (working capital), for the first eight months of 1938, has averaged 99/100ths of 1 per cent, in marked decline from the 2.56 per cent for the eight months of 1937, these rates, of course, being stated on an annual basis. (Tr. 200-201)

The Splawn Report repeatedly emphasizes the depressed traffic and earnings for 1938. On page 26 it refers to, "the collapse of freight traffic;" and at another place on the same page to "the immediate low state of railroad traffic." After reviewing the admittedly unsatisfactory results of 1937, it points out the downward tendency in 1938 and says, on page 25:

> "The financial results shown above for the year 1937, taken as a whole, although unsatisfactory, would not indicate a critical situation. However, the results for 1937 cannot be taken as indicative of the situation in 1938. Costs are on a higher level and traffic is on a much lower level in 1938 than in 1937.
>
> "The chief item of increased cost is the higher level of wages and salaries."

The volume of railway freight carloadings for the first 38 weeks of 1938, January 1 to September 24, was smaller than in the corresponding 38 weeks of any of the last 15 years, save only 1932 and 1933. The carloadings this year to September 24 have been 24 per cent less than in 1937 to the same date; 16 per cent less than in 1936 and 37 per cent less than in 1930. The trend of carloadings during the last few weeks does not indicate any definite improvement for the future. (Tr. 209)

Together with other industries, the carriers since 1929 have passed through an economic and financial depression, the most prolonged and serious in their history. Railway financial results are far below what they should be by any normal standard and far below what they must be if the industry is to survive. (Tr. 210)

Going back to Carriers' Exhibit No. 3, it will be noted that total operating revenues for 1929 were approximately \$6,279,000,000 and expenses and taxes for that year were approximately \$4,802,000,000. The difference, or the net railway operating income for that year, was \$1,250,000,000, constituting a rate of return of 4.81 per cent on the property investment. But for the year ended June 30, 1938, total operating revenues have declined to about 3¾ billion dollars from the 6¼ billion of 1929. Operating expenses and taxes have declined to about 3¼ billion but the margin or net railway operating income has declined to about \$360,000,000. This decline in net railway operating income from a billion and a quarter dollars to 360 million dollars is extremely significant. (Tr. 215-216)

Net railway operating income for the year ended June 30, 1938, was exactly one-half of what it was for the year 1911, and 1911 was a much lower year than a number of succeeding years. Net railway operating income for 1938 is even a smaller fraction of what it was for the post-war period from 1921 through 1929. (Tr. 216-217) In the pre-war period from 1911 to 1917, when net railway operating income was much larger than now, there was very much less investment in railroad plant. The effect of the large capital investment since that period and of the lower relative net operating income is graphically shown in the chart in the upper right hand corner of Exhibit No. 2 charting the trend of the rate of return. There has been no significant change in the Commission's classification of accounts in the period covered by the exhibit which would in any way change the showing of this chart. The statistics are comparable throughout the whole period. (Tr. 219-220)

The high level shown on Exhibit No. 2 from 1921 to 1929 reflected the peak of traffic, both passenger and freight. The very precipitous drop to 1933 is the effect of the general depression which brought traffic down sharply and rapidly, led to a decline in the number of employees on the railroads, a decline in the amount of purchases of materials and supplies and in all other costs of operation. There

was a gradual rise in traffic from 1933 to 1937 but at the same time there were increased costs in operation due to increasing prices of materials and supplies and increasing taxes, temporarily offset to some extent by the 10 per cent voluntary reduction in pay to employees, until the "depression peak" was reached in 1937. From that peak all the indices rapidly dropped in 1938. (Tr. 222)

Beginning in 1911, the rate of return on investment reached its highest point in railway history in 1916, of 5.90 per cent. Beginning in 1921, it was substantially less than 3 per cent, rose to another very much lower peak in 1926 of less than 5 per cent, after a dip through 1927 and 1928 reached a figure of 4.81 per cent in 1929; then very rapidly dropped to about 1.25 per cent in 1932. At no time since has it reached higher than 2.57 per cent, and from that point it has dropped abruptly down to 1.39 per cent for the year ended June 30, 1938, and to 99/100ths of 1 per cent for the first eight months of 1938 extended on an annual basis. (Tr. 223-224)

Referring to the chart on the lower right hand corner of Exhibit No. 2, net income after fixed charges in 1929 was slightly less than \$900,000,000. That declined rapidly until in 1932 we reached a level of \$139,000,000 *net deficit* after fixed charges. There were deficits in 1933 and 1934, a slight net income in 1935, a considerable increase in 1936, a drop to less than \$100,000,000 in 1937, and again a drop to a deficit for the year ended June 30, 1938, of \$122,000,000. For the first eight months of this year alone, to August 31, 1938, the deficit has been \$182,000,000, compared with the deficit of \$122,000,000 for the entire year ended June 30, 1938. (Tr. 225-226)

Referring to Carriers' Exhibit No. 3, witness Parmelee, the column headed "Taxes," the very significant measure of the tax burden is to relate it to the total operating revenues in terms of the percentage ratio of taxes to revenues; that is, taxes in cents per dollar of revenue. That ratio has grown very rapidly in recent years. In 1929, it was 6.32 cents or per cent. That showed a steady increase to 8.80 in 1932, a slight drop through the years 1933 to 1935 to 6.86 in 1935. It then increased to 7.89 in 1936, slightly dropped to 7.82 in 1937, and in the year ended June 30, 1938, rose to 8.92, higher than in 1932. For the first eight months in 1938 it for the first time passed beyond 10 cents to 10.05 cents of tax for each dollar of revenue. More than one-tenth of the operating revenue dollar was absorbed in taxes. (Tr. 228)

A significant reason for the increase in taxes is because of the new form of pay roll taxes placed upon the carriers for the direct benefit of their employees under the Railroad Retirement Act of 1937 and under the unemployment compensation provisions of the Social Security Act of 1935. The details of the effects of these taxes, which really are an additional payroll burden on the carriers as additional protec-

tion to their employees, were carefully explained by Dr. Parmelee. (Tr. 228-230)

After full allowance for the taking over by the government of formerly voluntary pensions as compared with the additional tax burden under the Retirement Act, the net increase in cost to the carriers this year for these two items of additional protection and compensation to employees will be about $70,000,000, or about 4 per cent addition to the carrier payrolls. (Tr. 230-231)

The employees in this case express the view that they are shocked at being brought into any comparison with income of farm labor and of farm owners. They assert that they are a class preferred far above the farming population. They undertake further to reject general comparison of their earnings with the earnings of other wage earners in general. In this connection it is to be noted that the pension provisions of the Railroad Retirement Act and the unemployment compensation provisions of the new Railroad Unemployment Insurance Act which is to go into effect next year both create highly preferential systems of protection for railroad employees much more liberal than the pension and unemployment compensation provisions of the Social Security Act for workers in other industries. (Tr. 232-234)

Insofar as these two systems of protection are preferential and favor railroad employees above other systems in general, and certainly in view of the fact that other industries can pass on to their customers the burden of their Social Security taxes whereas railroads cannot, it seems to us that these particular new forms of taxes are elements to be taken into consideration in measuring the condition of railroad employees and as bearing upon the condition of the industry. Of course, if the railroad industry were treated in these respects exactly as other industries are treated and had the same opportunity to pass the costs on to their consumers, we would not consider such general taxes as important in wage fixation.

Particular attention is invited to Carriers' Exhibit No. 4, witness Parmelee, which shows the trend of net deficit and net income railroad mileage from 1929 to 1938. In 1929 only 4.21 per cent of the mileage represented companies having a deficit in net income and the total amount of such deficit was $10,641,670. In 1932, 67.70 per cent had net income deficit of $247,687,492. But for the first six months of 1938, 86.69 per cent of the mileage had net income deficit of $200,825,016. (Tr. 216)

Carriers' Exhibits 5, 6 and 7, witness Parmelee, give the breakdown to show the individual net income or deficit lines in each of the three major districts. In 1937, 23 out of 54 carriers in the east, 14 out of 25 carriers in the south, and 22 out of 43 carriers in the west, were in the red as to net income, or a total of 59 carriers out of 122 for the

three major districts. Carriers' Exhibit No. 8 is a supplement to the preceding three exhibits. It is set up in exactly the same form and brings the information down to the latest available date in 1938. It shows, as to the first six months of 1938, a total of 38 carriers in the east, 20 in the south, and 35 in the west, or a total of 93 out of 122 in all, operated at a net deficit after fixed charges. That 93 for the first six months of 1938 is to be compared with the 59 operating at a net deficit in the calendar year 1937. The situation among the railways was much worse in the first six months of 1938 than in the calendar year 1937 and also worse than in the year ended June 30, 1938. The condition in this respect is also substantially worse than in 1932. For that entire year the net deficit after fixed charges was $139,000,000. For the first six months of 1938 alone the net deficit was $181,000,000. (Tr. 237-240)

Comparing this condition with the period immediately preceding February 1, 1932, when employees voluntarily accepted a 10 per cent deduction in pay, the present condition is worse. In the six months ending January, 1938, net railway operating income was less by $10,955,000, or 4.4 per cent, than it was during the six months' period ending February 1, 1932. Even more significant, net railway operating income for the six months succeeding February 1, 1938, that is, up to July 31, 1938, was less by 7.5 per cent than it was during the corresponding six months of 1932, during which period the 10 per cent deduction in pay was in effect. (Tr. 241)

3. The Significance of Reduced Maintenance Expenditures.

However, the showing as to income for 1938, hereinbefore made, does not give a full comparison on its face. To get the whole story a comparison must be made of expenditures for maintenance during the respective periods. Maintenance expenditures are a very large part of total operating expenses. Maintenance expenses for the year 1938 have been much lower than they were in the year 1937 and have shown a very marked decline under an annual average of maintenance expense. Carriers' Exhibit No. 9, witness Parmelee, shows this fact most strikingly. When revenues of carriers decline this forces upon management the necessity of making such reductions in expenditures as may be possible. There is a very definite limit below which transportation expenses may not be reduced. Maintenance expenditures offer the chief field open for curtailment. Even there, there is a definite limit of safety below which those expenditures may not be reduced. But during recent years a very definite and large reduction in maintenance expenditures has been made necessary by the financial condition of the railroads. Referring to Exhibit No. 9 and taking the

1921 to 1928 average as a base (100), there has been an almost steady decline in the index of maintenance expenditures since. This index stood at 99 in 1929, at 82.9 in 1930, at 64.8 in 1931, and declined to 44.3 in 1933, rose to 63.6 in 1937, and then dropped sharply to 57.1 for the year ended June 30, 1938.

Taking a long view over the years, part of this reduction has been due to mechanization and improved methods, which incidentally leads to unemployment among maintenance forces, but the large part of the reduction is due to the absolute reduction in physical maintenance work down to the very minimum consistent with safety. If the maintenance expenditures of the carriers during the first eight months of 1938 had been as great as they were in the first eight months of 1937, the carriers would have operated at a net operating deficit of $34,000,000 before fixed charges and even before taxes. This means that they not only failed to earn their fixed charges but they also would have failed to earn their taxes and indeed would have failed by the amount of $34,000,000 to earn their operating expenses without regard to taxes and fixed charges. So that the mere fact that they have had even the moderate operating income for this year shown by Carriers' Exhibit No. 3 is due in large measure to the reduction in their maintenance expenditures in 1938. (Tr. 245-246)

The Splawn Report made a vigorous statement regarding this question of reduced maintenance expenditures. On page 28, it said:

> "The effect of continued skimping of maintenance may be serious. In the 1920's the railways were liberally maintained and they entered the depression in good physical condition. In 1929 they applied nearly 2,000,000 tons of new rails. This was cut to 1,517,000 tons in 1930, to 985,000 in 1931, and to 395,000 in 1932. Since that time there has been some recovery, reaching 921,000 in 1936. In 1929 they applied 74,662,000 wooden cross ties; in 1933, 37,287,000; and, in 1936, 47,345,000. Painting and renewing of fences has been postponed to a large extent. It is safe to say that there is an accumulated deferred maintenance, if the railways are to continue to handle as much traffic as in 1937, of not less than $500,000,000."

4. Current Trends in 1938.

However, while of necessity admitting the desperate situation proved by the foregoing official statistics, the employees rely on prophecies that things are getting better, that business is turning up, that prosperity is "around the corner," and that therefore wage rates should not be reduced. Prophecy is unsafe business at best but living on prophecies is starvation rations when there is nothing else to live on pending their remote fulfillment. (Tr. 145)

Unsafe as it is to make predictions, we can make some definite statements as to the trend of the past few months, which points out the indications of future developments.

We have already shown that while the railways had a small net operating income during every month of this year except February, that income has not been sufficient to meet fixed charges and that the result during the first eight months of 1938 is that they have operated in the red as to net income to the extent of $182,000,000. They have only been able to show the small net railway operating income during these months by reason of the severe curtailment of maintenance expenses.

However, freight traffic is still running sharply below the corresponding period of 1937 and when comparing most recent months of this year with corresponding months of 1937 it must be kept in mind that the level of freight traffic in the middle and latter period of 1937 was on a much lower basis, seasonally, than in the first half of 1937.

That present trends indicate no substantial or immediate improvement is strongly supported by the monthly index of railway freight carloadings computed by the Federal Reserve Board and which that Board adjusts for seasonal fluctuations in traffic. This is a standard statistic. Carriers' Exhibit No. 10, witness Parmelee, gives the full showing based on these Reserve Board indices.

Taking 1938, compared with the base years 1923 to 1925 (and these base years are selected by the Reserve Board and not by us) the average carloadings for the first eight months were only 60.4, which compares with an average of 78 in 1937 and of 75 in 1936. This index was as high as 65 in January of 1938 and was 62 in February, at about the time the Splawn Report was prepared. It was 60 in March. It then dropped somewhat lower during April, May and June, and, while there was a slight rise in July and August, the figure for August, the latest available, was lower than in January, was exactly the same as in February and was only a shade higher than in March. Thus the latest available figures are not to any appreciable degree better than they were relatively during the first quarter of 1938. (Tr. 252.)

The chart at the right of Exhibit No. 10 is self-explanatory and shows the curves for 1929, 1937 and for the first eight months of 1938, It shows the very marked decline in the index of carloadings for 1938 under 1937. Shipper groups estimate that the carloadings will be less for the last quarter of 1938 than for the last quarter of 1937 by 7.3 per cent and for the last quarter of 1937 the nose-dive had already started. It results that the accumulated effect of that decrease in the last quarter of 1937, and of another decrease in the last quarter of this year, if it occurs according to the present forecast, will be as great as the re-

ductions have been in the last three or four months. (Tr. 253) The break in the middle of 1937 is even more severe than the break which took place in 1929 after the collapse in the fall of that year. (Tr. 254.)

Carriers' Exhibit No. 11 shows the comparison of freight carloadings during the first 36 weeks of each year from 1929 to 1938, inclusive, with a graphic chart at the bottom showing the respective comparisons of 1938 under each of the preceding years. It will be noted that actual carloadings during the first 36 weeks of 1938 were 44.7 per cent under the same period for 1929, 37.7 per cent under 1930, 24 per cent under 1931, 4.9 per cent over 1932, 2.5 per cent over 1933, 6.1 per cent under 1934, 4.6 per cent under 1935, 16.3 per cent under 1936 and, most significantly, 24.5 per cent under the corresponding period of 1937. Since this Exhibit was prepared, figures have become available for two additional weeks, the week ending September 17 and the week ending September 24. Adding the results of these two weeks the percentages above stated would change on the Exhibit, if revised to cover 38 instead of 36 weeks as follows: 1938 would be 44.7 per cent under 1929; 37.5 per cent under 1930; 23.6 per cent under 1931; 5.1 per cent over 1932; 2.4 per cent over 1933; 5.9 per cent under 1934; 4.6 per cent under 1935; 16.3 per cent under 1936 and 24.4 per cent under 1937. (Tr. 262-263.)

The operating expenses of the railways are now much higher than they were in 1932 and 1933 when the carloadings were slightly less than in 1938. Wages are higher, costs of materials are higher and tax rates are higher. At the same time revenues per ton mile and per passenger mile of traffic as will be shown in a moment, are lower now than they were in 1932, when the voluntary 10 per cent reduction in pay went into effect. (Tr. 264.)

So, however they be looked at, the results so far this year are most discouraging. Those who argue for an imminent, substantial upturn which might support the present high wage structure are either engaged in wishful thinking, in whistling to keep up their courage, or in whistling in absolute disregard of the plight of the industry. The present financial position of the railways is even more desperate than it was in January 1932, when the employees voluntarily accepted a deduction of 10 per cent from their pay. And yet since that time the entire 10 per cent has been restored and, further, the 1937 wage increases of approximately 8 per cent have been piled on top of the restored, pre-depression wages.

5. Important Significance of the Receiverships and Trusteeships of Railroads.

We have already referred to the fact that more railway mileage is now in the hands of the courts than at any time in the history of American railroads. Carriers' Exhibit No. 12, witness Parmelee, gives the full story.

Reorganization proceedings are under way with respect to virtually all of these companies, of which there are 39 Class I Carriers, as well as some of the smaller carriers. None of these reorganization proceedings has been completed as yet. The Interstate Commerce Commission, before whom the proceedings must first be conducted, has made only one report as to the reorganization of a comparatively large carrier, and that report has been protested and suspended pending further hearing. It results that no large company has yet been released from court supervision, or has been reorganized under such supervision, during the past two years. The principal reason for this is the existing credit crisis in the industry, the destruction of railway credit by reason of low traffic and revenues and high operating expenses, and the impossibility of forecasting future earnings such as to afford a sound basis for corporate reorganization. (Tr. 266-267)

In this connection the testimony of Mr. Scandrett, Trustee of the Milwaukee, is highly significant. He said at pp. 1318 and 1319 of the transcript:

> "The major difficulty that has been encountered in developing and carrying out plans for reorganization of railroads in the bankruptcy courts has been the lack of earnings to support plans which provide for fixed interest bearing bonds for any substantial part of the investment in the property. An increase in net revenues would be of the greatest aid in formulating plans of reorganization and shortening the period these railroads must otheswise remain in the custody of the courts."

The Splawn Report referred to this very point, saying on Page 33:

> "Recasting the financial structure of a major property is a vast undertaking. It requires, among other things, a forecast of future earnings. The fluctuations in business in the recent past, and the present low level of earnings not only make such a forecast difficult but make security holders unwilling to accept a plan based on present conditions.
>
> "*Until the level of future earnings is more clearly indicated, we are convinced that progress in completing reorganizations must necessarily be slow.*" (Italics ours)

6. Freight and Passenger Traffic Trends.

The trend in the revenue ton miles and in the revenue passenger miles of the carriers, that is to say in units of traffic handled, has generally been downward over the past years for both forms of traffic with some exceptions. Carriers' Exhibit No. 14, witness Parmelee, presents the statistics and graphic charts illustrating this fact. Attention is particularly invited to the third figure column "Revenue Passenger Miles," which shows the trend of passenger traffic, and to the next to the last figure column headed "Revenue Ton Miles," which shows the trend of the freight traffic, and to the charts at the bottom reflecting these trends.

The revenue ton miles showed a gradual upward tendency from 1921 to 1929, then took a precipitous downward trend through the years 1932 and 1933, came back to some extent over the next four years through 1937, when, however, they were still far below the level of 1923 to 1930, and have taken another nose-dive in the year ended June 30, 1938, which year, it will be noted, contained six months also included in the year 1937. The drop at the end of the chart between 1937 and 1938 is thus particularly significant because the 1938 figure represents six months of 1937 and six months of 1938. (Tr. 278)

In the case of the passenger movement, the railways compete not only with other commercial forms of transportation, motor bus and airplane, but also with privately operated automobiles which are being used in larger numbers and more extensively for long distance travel. Because of the declining revenue per ton mile and per passenger mile, the downward trends in recent years in passenger revenue and in freight revenue have been greater relatively than the downward trends in ton miles and in passenger miles charted on the graph. If revenues were so charted they would show more precipitous declines. (Tr. 279-280).

Referring to the passenger traffic, the volume of traffic in terms of passenger miles declined between 1929 and 1938, 24 per cent. But the passenger revenue declined 51 per cent, or more than twice as great a relative decline as the passenger miles. Between 1937 and 1938, the volume of passenger traffic declined 4½ per cent, while the volume of passenger revenue declined 4.2 per cent. (Tr. 280)

The same general series of trends has been followed in the freight business. Marked decreases have occurred in the amount of revenue per ton mile. The result is that from 1929 to 1938 the volume of freight traffic as measured in ton miles showed a decrease of 30 per cent, whereas the freight revenue declined 36 per cent. From 1937 to 1938, the volume of freight traffic declined 13.7 per cent, while the freight revenue declined 12 per cent. (Tr. 280)

The comparison of revenue is sharply brought out by Carriers' Exhibit No. 15, witness Parmelee, showing the downward trend in both revenue per ton mile and in revenue per passenger mile by averages and by graphic charts. Average revenue per ton mile declined from 1.275 cents in 1921 to 0.935 cents in 1937, a decline of 27 per cent. Average revenue per passenger mile declined from 3.086 cents in 1921 to 1.794 cents in 1937, a decline of 42 per cent. The average revenue per passenger mile in 1937 was the lowest ever recorded in railway history, while the average per ton mile in that year was lower than at any time since 1918. Broadly speaking, these declines in the unit revenue of traffic have been due largely to the growing competition that exists. (Tr. 282-283)

It will be observed that there has been a rise in average revenue per ton mile of freight from 1937 to the second quarter of 1938 of from 0.935 cents to 1.017 cents, and a similar rise in average revenue per passenger mile of from 1.794 cents to 1.849 cents. This is reflected both on the table and on the two charts of Carriers' Exhibit No. 15. The explanation of that rise is to be found in the authorization for increased rates.

The railways have made repeated efforts in recent years to increase the amount of freight revenue and the amount of passenger revenue by securing authorizations from the Interstate Commerce Commission to increase their freight rates and their passenger fares. Dr. Parmelee reviewed in detail the various applications for freight rate increases. (Tr. 283-285)

As a result of these efforts the Interstate Commerce Commission granted certain increases in rates, the last being effective in the spring of 1938.

If the rate levels now in effect had been in effect throughout the year ending June 30, 1938, the gross revenues for that twelve months' period would have only increased approximately $80,000,000. (Tr. 289)

7. Capital Expenditures for Additions and Betterments to Railway Property and Resulting Increases in Operating Efficiency.

We shall refer again to capital expenditures for additions and betterments in connection with the subsequent discussion of the charge made by the employees that railroads are over-capitalized. For the moment it is important to note these capital expenditures *per se* as to their effect on increased operating efficiency of the carriers which will next be discussed.

Carriers' Exhibit No. 22 gives the picture as to capital expenditures for additions and betterments to railway property for the years 1921 to 1937. Taking the whole period, 45 per cent of these expendi-

tures were for equipment and 55 per cent for roadway and structure, heavier track, additional ballast, additional main track, shops and enginehouses, bridges, trestles and culverts, and other similar improvements. (Tr. 341-342.) The grand total for the 17-year period is $9,571,000,000.

These capital expenditures have been fully justified by the very marked increase in railway operating efficiency during the same period, particularly since the year 1922. This increased efficiency due to these capital expenditures is strikingly brought out by Carriers' Exhibit No. 23, witness Parmelee.

As a result of these expenditures of more than nine billion dollars for capital improvements and betterments, average tractive power of locomotives and average carrying capacity of freight cars have been very greatly increased; shops, enginehouses, yards and yard facilities have been improved; and many other elements of the railway plant have been improved, enlarged and modernized. Grades have been reduced, curves ironed out, heavier track has been installed, better ballast and many other improvements have been made. (Tr. 343)

Exhibit 23 includes various operating averages which are compiled by the Interstate Commerce Commission to indicate trends in the physical performance or efficiency of the carriers. In spite of the downward traffic trend since 1921 there have been striking upward trends during the same period in practically all of the operating or performance averages. Generally speaking, all of the significant factors of operating efficiency and economy have improved substantially. Freight train speed for instance has shown a 54 per cent increase since 1922, and the gross ton miles per freight train hour, an important factor of operating efficiency, have almost doubled. The last two columns of figures on the chart show a strikingly reduced consumption in fuel by locomotives in both freight and passenger service. In the year 1937 alone this reduction, as compared with 1921, would mean a saving of some $68,000,000. (Tr. 344-345)

These strikingly improved efficiency trends have reflected themselves in a total reduction of operating costs per 1,000 ton miles of freight as shown by Carriers' Exhibit No. 24, witness Parmelee. For the years 1921 to 1937, covered by this exhibit, the freight proportion of the operating expenses related to an average per 1,000 ton miles has shown an almost steady decline throughout the period from 1921 to 1937, with a slight leveling off in 1937. Had the cost to the carriers of handling 1,000 revenue ton miles in 1937 been as high as it was in 1921, the total operating expenses in 1937 would have been greater than they were by $1,575,000,000., which incidentally is three times as much as the total annual interest charges of the carriers, and this represents a

year's saving in operating expenses by reason of increased efficiency and economy resulting from the improvement of plant and methods by means of nine billion odd dollars capital expenditures. (Tr. 349-351)

The employees in this case undertake to argue that this reduction in operating costs per 1,000 ton miles of freight is an index of the increased efficiency or productivity of the work of railroad employees and use this as a basis to argue for maintenance of present high wage rates. We shall have a later discussion of this fanciful theory of increased employee productivity in a further section of the brief. For the moment it is sufficient to point out the ridiculousness of the assumption that increased tractive power of locomotives, increased length and speed of trains, increased carrying capacity of freight cars has any possible relationship to employee efficiency. No efficiency of the employee adds to the tractive power of locomotives or to the length of trains or to the carrying capacity of cars. It takes no greater work on the part of employees to operate locomotives of large tractive power which haul longer trains and heavier cars than to operate lighter and less efficient locomotives pulling shorter trains and lighter cars. It is plainly the capital investment in improved machinery which produces these increases in operating efficiency. (Tr. 1329-1332)

Carriers' Exhibit No. 25, based on theoretical assumptions very interestingly illustrates the effect on net railway operating income if the carriers had not rehabilitated their plant through their capital expenditures program. The assumptions involved in the exhibit were fully explained by Dr. Parmelee. (Tr. 353)

Net railway operating income in 1937 actually was $590,000,000. If the carriers had not had the net saving of $1,576,000,000 effected by their program of capital expenditures, and after considering the carrying charges on this increased investment of $1,306,000,000, this net railway operating income for 1937 would have been wiped out and they would have operated at a net deficit of $716,449,000.

Another most interesting assumption and illustration is made by Carriers' Exhibit No. 26. The employees assert generalizations to the effect that labor has been getting less and less, and capital more and more, of the profits of the industry, in effect asserting that under banker domination railroads have been taking care of capital first and of employees' payrolls secondarily. Of course, no such thing has happened and no one would for a moment assert that capital is entitled to a first lien on revenues ahead of the payroll for employees. However, in order to illustrate pointedly the utter fallacy of this argument of the employees, Exhibit No. 26 makes the theoretical assumption of a condition in which capital is first given a return of 5¾ per cent on the Commission's depreciated valuation, instead of the return

which it actually received, in order to see what the effect of that assumed condition would have been upon money left for the purpose of paying wages and other expenses. On this theoretical assumption there was a total actual deficiency in return to capital of $4,837,328,215 for the eight years from 1930 to 1937. And if this theoretical condition of capital having the first lien had obtained, and if that deficiency had come out of the payroll and been paid to instead of withheld from capital, it would have necessitated a reduction of 35 per cent in the total payroll of $13,704,662,638 charged to operating expenses.

From all this it follows, that bad as is the present financial condition of the carriers, it would have been infinitely worse and the position of the railway employees would have been infinitely worse had the capital improvement in plant and equipment not been made and if it were not possible for the railways to operate today according to the increased levels of efficiency and economy which that capital expenditure program has produced.

In this connection it will be noted that the Interstate Commerce Commission in its decision in Ex Parte 123 this year stated that the operations have increased in efficiency during recent years. And the Supreme Court of the United States in its decision in *Alton Railroad Company* v. *Railroad Retirement Board*, 295 U. S. 330, 336, approving the findings of the lower court in that case, said:

> "Railroads were when the Act was enacted and are now operated efficiently and safely and more efficiently and much more safely than at any time in history."

8. Importance of the Railway Industry to the Economic and Social Welfare of the United States and to its Self-defense.

It must be so obvious as hardly to need emphasis that the present desperate plight of the railroad industry is a matter of most grave public concern and that it must be remedied and immediate relief must be found in the public interest.

The railways operate in every state and in almost every county of the United States. They supply transportation service to every other economic group in the nation, to agriculture, manufacturing, mining and commerce. They bind the country together as a single national unit with 419,000 miles of track, 48,000 locomotives. and 1,800,000 freight and passenger cars operating into and out of every section of the country. (Tr. 197, 361)

In addition to their own employment of about a million men, they create and supply employment opportunities to hundreds of thousands of other men in other lines of industry and commerce through their purchases.

Carriers' Exhibit No. 27, witness Parmelee, very significantly shows the economic effect of purchases of materials and supplies by the railroads. From 1923 to 1937 the total expenditures of the carriers for the various products, fuel, forest products, iron and steel products and miscellaneous, amounted to $15,637,000,000, or nearly half of the total national debt, or an average of more than $1,000,000,000 a year. The gross capital expenditures of the railways for 1937 in addition, shown in Exhibit 22, aggregated $510,000,000, while the railway purchases of materials and supplies even for that year amounted to $966,000,000, or a combined expenditure for the year for capital expenditures and for materials and supplies of $1,476,000,000. Even that year was far below normal. (Tr. 363)

For the present year 1938, both payrolls and capital expenditures have shown a marked decline under 1937 and have returned more nearly to the levels of 1932 and 1933, thus, of course, reflecting the result of the desperate financial stringency confronting the carriers. Railway purchases of materials and supplies for the first six months of 1938 were only about one-half as great as in the corresponding months of 1937. (Tr. 363)

These expenditures of money by the railroads for materials and supplies and their capital expenditures for plant improvements represent a most significant, although currently insufficient, phase of the industry's contribution to the progress of economic recovery in the United States. The railroads are the largest single purchaser of some of the basic commodities produced by industry. They buy more than 70,000 different manufactured items each year. In normal times they buy and utilize more than one-fifth of the bituminous coal output, 17 per cent of the iron and steel output, 20 per cent of the fuel oil, 20 per cent of the timber cut, and smaller proportions of the output of other durable goods. (Tr. 364)

Another important phase of the contribution of the industry to economic and social welfare is that it has served in the past, and would still continue to serve if it were in good financial condition, as a large medium of investment for individual investors, insurance companies, savings and other banking institutions and philanthropical and educational institutions. As is shown in Ex Parte 123, the amount of railway bonds in the hands of the public is $11,834,000,000., of which a total of $6,617,000,000, or nearly 56 per cent is held by financial and fiduciary institutions. These holdings represent securities held for the benefit of millions of owners of insurance policies, large and small, investors in savings banks, bank depositors, and those interested in the welfare of hospitals, schools, colleges and other religious and philanthropical institutions. The financial well being of the railway industry thus affects a large proportion of the citizens of the United

States, even though they are not direct owners of railway securities. (Tr. 365-366)

In the Splawn Report, at page 32, this thought was emphasized:

> "Losses have already been incurred by credit institutions and individuals and additional bankruptcies may add to them. Necessarily such losses, and possible losses, have a depressing effect upon the general business conditions of the country. These considerations add to the importance of stabilizing the railroad industry on a sound basis as rapidly as is possible."

The railway plant must continue to be improved. Recent progress has been, and future progress will be, in the direction of intensive rather than extensive development, and of improvement of the several types of facilities. Such physical improvements cost money and the same kind of progress, continued in the future, will cost more money. The industry will continue to need a large input of new capital each year so as to keep it abreast of modern conditions and demands. To secure this capital it must regain the financial credit position it has now lost. (Tr. 366-367)

This need for further capital additions to the railway plant was referred to by Coordinator Eastman in his 1935 Report when he said, on page 33:

> "Today, in order to halt retrogression and attract new business, the industry faces the double necessity of reducing costs, so far as possible, and of making changes in operation and service, some of which will involve rather extensive investments in new types of equipment. Such investments will require credit from some source."

Thus, railway carriers function as public servants in many and broad fields of economic activity, and their present and future welfare is a matter of keen interest to everyone. Predicated on the necessary belief that they have an important place in the economic scheme for a long time to come, it is clear that such a position can only be maintained if their operating costs are held within reasonable limits. On the other hand, if they continue in their present impoverished condition, such a situation will have an adverse effect on the general economic structure of the country, on their ability to maintain or increase the employment of their working forces, on business conditions throughout the United States, and finally on their ability to serve the nation, not only in times of peace, but in times of threatened war or of war itself when, as everyone knows, the railroads are an indispensable and integral part of the war machine and vitally necessary to defense of the nation.

IV.

THE DIVERSION OF TRAFFIC FROM THE RAILROADS BY COMPETITION OF NEW AND EXTENDED FORMS OF TRANSPORTATION AND BY TECHNOLOGICAL CHANGES IN INDUSTRY.

We have already shown the effect of the general business depression on the traffic and revenues of the railroads. Little further need be said on this subject. The general business depression has, of course, reduced the total transportable traffic in the country. The facts of the general depression are matters of common knowledge and have been since 1929. It has been felt in all lines of business and commercial activity, in government revenues, national income, in the staggering total of unemployment in the United States in recent years, in the tremendous sums of borrowed or budget-deficit money the Federal Government has been obliged to spend for direct relief and for indirect relief in public works and other projects, and in a thousand other ways which have touched all the people directly and intimately. Suffice it to say, on that subject, that the railroads are not responsible for the general business depression; they are its victims, along with all other businesses and with government itself. They can only transport what is offered them for transportation. They have nothing to sell but transportation.

The railroads have weathered the storms of many depressions in the past, though none as severe and long continued as that since 1929. But the peculiar and crippling effect of this depression on the railroads has been largely because it has been coincident with an entirely revolutionary development of increasingly effective competition of new forms of transportation, coupled with technological changes in industry which have tended further to reduce the total volume of goods for transportation beyond what would have been the depression reduction but for such changes. We shall consider these elements in some detail now.

1. The Interstate Commerce Commission Study of Potential Against Actual Traffic.

Carriers' Exhibit No. 13, witness Parmelee, shows the extent to which actual railway freight traffic since the year 1926 has been lagging behind the potential traffic that would have been available to rail carriers had the competition of other agencies of transportation not entered the picture. The exhibit is based on a special study of the Bureau of Statistics of the Interstate Commerce Commission, published in October, 1937, under the title of "Fluctuations in Railway Freight Traffic Compared with Production, Class I Steam Railways, 1926 to 1936."

We invite particular attention to the fact that this is an impartial, Commission study and not a railroad study nor prepared with any thought of use in the present case.

The purpose of the study, as declared by the Bureau, was to measure the extent to which steam railways have lost traffic to competitive means of transport. The Bureau calculated the potential traffic on a relative or index basis, using the years 1923 to 1925 as the base, or 100 per cent. They then computed the actual traffic carried in each year from 1926 to 1936, inclusive, on that same index, or relative basis. (Tr. 271-272)

Taking the year 1936 by way of example, in the first two figure columns of this exhibit it is shown that the index of actual traffic in the second column in that year was 75.6, whereas the index of potential traffic was 91.3. The difference between those two indices represents the opinion of the Bureau of Statistics as to the traffic lost to the railways during that period, from 1923 to 1936, to outside transport competition.

The Bureau worked these indices out for each class of commodities and then put the various indices together on a weighted basis. They worked out, for each class of commodities, the actual tonnage loss in 1936 due to these competitive factors, and when they added the total tonnage of all commodities together their estimate was that in 1936 a total of 196 million tons of traffic was lost to the railways in that year because of these competitive conditions. (Tr. 272)

While the Bureau of Statistics did not place any exact value in terms of freight revenue on that 196 million tons of traffic, they did point out that the figure might range as low as $615,000,000 and as high as $1,064,000,000 for that one year alone. The spread between the potential and the actual indices, as shown in the first two columns of the exhibit, tended to grow in extent from year to year throughout the period covered, and was greater in 1936 than in any of the preceding years. This spread was particularly marked in the groups appearing under the head of "Less than carload traffic"; second in the case of "Animals and their products"; and next in the "Products of forests," which is the fifth group in the exhibit. (Tr. 273)

The series of charts at the foot of Exhibit 13 are reproductions of charts which the Bureau itself drew, with the sole exception that in order to make an even comparison the charts on the exhibit have all been drawn on the same scale, whereas the Bureau used various scales. (Tr. 273-274)

These charts, first as to all commodities, and second as to the six principal commodity groups into which the Commission classifies freight traffic by rail, show the trend of the potential rail traffic and the trend in the actual rail traffic on the Bureau's index basis. The growing spread for the most part between those two lines is clearly outlined on the charts and is strikingly significant.

This exhibit means only one thing, and that is that the total amount of freight available for transportation in this country is going in smaller and smaller proportions to the railroads and in largely growing proportions to other forms of transportation such as motor trucks on the highways, the carriers by water, pipe lines, and even airplanes. (Tr. 274)

Dr. Parmelee explained in detail the method used by the Bureau of Statistics in making the study. The indices and chart lines for potential rail traffic do not represent total production of the country plus imports but represent that proportion of the total production plus imports which in the base years 1923 to 1925 was the proportion which went by rail.

With reference to this study, the Splawn report, page 27, said:

> "The increasing competition of motortrucks, water carriers, pipe lines, and other carriers with the railroads is indicated by the Commission's study of the fluctuations of railway freight tonnage originated on class I roads as compared with the tonnage of production. This analysis would indicate that, as compared with the average condition of 1923-25, the spread between the two trends had widened by 1936 to the extent of 196 million tons of freight. This figure is equivalent to about 20 per cent of the total tonnage originated on class I carriers in 1936."

2. The Direct Effects of Outside Competition and of Technological Changes in Industry on Railway Traffic.

On page 34 of the Splawn Report it was said:

> "In recent years there has been a great and radical change in transportation conditions, brought about principally by the rapid development of new forms of transportation, not all of which are subject to the Commission's jurisdiction. The railroads have lost much of their former dominance. Competition has become a continually increasing, and often a profoundly disturbing, factor. The present 'transportation problem' is very largely the product of that competition, combined with depression."

Mr. A. F. Cleveland, Traffic Vice President of the Association of American Railroads, testified on this phase of the case for the carriers, from a lifetime of experience and knowledge as a railway traffic officer, and presented exhibits and charts based on authoritative statistics. We invite careful attention to his testimony. (Tr. 524-644)

In the past fifteen or twenty years, and particularly within the last ten years, a great change has taken place in the nature of the competition with which the railroads are confronted by other agencies of trans-

portation. Competition by water carriers has become very greatly intensified and much more acute than ever before. Canals have been constructed at the expense of the government and tremendous expenditures have been made by the government to make navigable the inland waterways. The Federal Barge Line has been inaugurated and operated by the government. These waterways are made available to anyone desiring to use them, substantially free of charge and practically without taxation, as compared with the railroads which not only maintain their tracks and roadbeds but pay large taxes on the value of their entire property. Because of this fact, the charges of the actual users of water transportation on government improved waterways are considerably less than those which the railroads must charge, and therefore a tremendous tonnage has been diverted from the rail lines to the competitive waterways. (Tr. 534)

The more recent competitive developments have been the truck, the largest development in which has been since 1927; the development of hydro-electric power, replacing large movements of coal; the pipe line for gasoline, which has been greatly developed since 1931 and which prior to that time had been considered impracticable; the extension over vast areas of the pipe lines for the transmission of natural gas, with attendant displacement of coal by gas; and the very large increase in the use of petroleum oils in place of coal. The net effect of these changes has been the transference of large volumes of tonnage from the railroads to other agencies of transport, and in connection therewith the larger transference of tonnage previously handled by railroads to other products, in connection with which there is no railroad transportation or less railroad transportation required on the substitutes than on the commodities previously used.

In connection with the development of the automobile and the truck, there has been at government and state expense a tremendous extension of hard surfaced roads throughout the country. Much government money has also been expended in the development of hydro-electric power, the competition with which not only seriously affects the earnings of the railroads but also of those interested in the production, distribution and sale of coal. (Tr. 535-536)

The result is that railroads may no longer make their rates premised upon their needs but the question is under what basis of rates will competitive conditions permit the railroads to hold traffic. A fair, reasonable rate is of no use or effect unless traffic will move under that rate and it will not move by railroad if there are available the services of other agencies for such movement under lower rates. Railroads are no longer a monopoly or even a quasi-monopoly. A growing competitive situation arises from cases in which shippers elect to perform

their own transportation service by the use of waterways and highways. (Tr. 536-537)

The carriers are in a position of inability to adjust rates to offset increased costs of operation, by reason of this competitive situation. In the year 1933, Section 15a of the Interstate Commerce Act was amended by the insertion of a provision that the Commission shall give due consideration, among other factors, to the effect of rates upon the movement of traffic. Under these conditions the Interstate Commerce Commission asserts and exercises what amounts to a managerial function, namely the determination of whether a proposed rate will in fact produce additional revenues in view of outside competition. It results that in facing the problem of making ends meet, presented by rising costs, the railroads are no longer in a position in which, within the realm of reasonableness, they are free to set their rates at the level which in their judgment will produce the most revenue. The Commission may grant or refuse consent to an increase to such a level, or may grant it only in part, as was done in the last general freight rate increase case, Ex Parte 123. (Tr. 538-539)

Not only has large diversion of tonnage to other transportation agencies occurred, there has also been a large diversion due to relocation of industries and the substitution of commodities which in some instances mean no tonnage to the railroads and in other instances mean much less tonnage than under prior conditions.

The exhibits introduced in connection with the testimony of Mr. Cleveland, Carriers' Exhibits 29 to 39 inclusive, are most striking proof of these facts as to diversion of traffic from the rails to other forms of transportation and as to diversion by technological changes in other industries. These exhibits are self-explanatory and tell their own story. We need comment only on a few of the most striking facts disclosed.

Carriers' Exhibit 29 is highly significant. It relates ton miles of revenue freight and revenue passenger miles to the population of the United States over a period of years. It would naturally be assumed that the volume of railway transportation, both freight and passenger, would increase more rapidly than the population. However, the exhibit shows that this has not been true. Between 1916 and 1930, with few exceptions, the annual ton miles of revenue freight per capita ranged between 3,500 and 4,000. In the last full year for which the figures are available, the year ending June 30, 1938, the per capita ton miles of revenue freight were only 2,409. The decline in railway passenger transportation on a per capita basis has been even more striking. In 1919 and 1920, when war conditions and post-war conditions prevailed, there were almost 450 revenue passenger miles per capita. In 1923 the

figure was 343, but from that year on the decline was continuous, until for the year ending June 30, 1938, revenue passenger miles per capita amounted to only 181. Thus, both the freight traffic and the passenger traffic have not only failed to show an increase, on a per capita basis, but have fallen far short of keeping pace with the increase in population.

Carriers' Exhibit No. 30 shows some most striking facts in the progress of civil aeronautics. Total miles flown increased from 4,258,771 in 1926 to 66,071,507 in 1937. The number of passengers increased from 5,782 in 1926 to 1,102,707 in 1937. Express and freight carried increased from 3,555 pounds to 7,127,369 pounds. Mail carried increased from 703,310 pounds in 1926 to 17,706,159 pounds in 1936, the 1937 figure not being available. Average fare per passenger steadily decreased until now it approximates rail fare plus Pullman. Income to airplane contractors for carrying mail increased from $710,042 in 1926 to $13,100,147 in 1937.

Number of passenger miles flown increased from 84 million odd in 1930 to 476 million odd in 1937. Gross revenue from passengers increased from $6,937,000 in 1930 to $26,690,000 in 1937.

In 1937 the airplanes took from the railroads approximately $40,000,000, all of which, prior to their advent, would unquestionably have been in the railroad revenues. (Tr. 550-551)

Carriers' Exhibit No. 31 strikingly illustrates the increase in the registration of passenger automobiles as compared with the trends of railroad passenger miles and of railroad passenger revenue. Automobile registrations from 1921 to 1937 increased 168.4 per cent. During that same period, there was a decrease in revenue passenger miles of 33.9 per cent and a decrease in passenger revenues on the railroads of 61.6 per cent.

Carriers' Exhibit No. 32 shows the increased production of electricity by water power, from 15,279 million kilowatt-hours in 1920 to 43,702 million kilowatt-hours in 1937, an increase of 186 per cent. Every kilowatt-hour produced by water power displaces a kilowatt-hour produced by coal. Coal is one form of traffic which is distinctly railroad traffic. This exhibit strikingly shows the loss of coal traffic by substitution of hydro-electric production for steam production of electricity.

Carriers' Exhibit No. 33 shows similar facts with reference to the increasing production and interstate pipe line transportation of natural gas, the production of natural gas having increased 258 per cent from 1921 and the pipe line transportation of natural gas having increased 283.4 per cent between 1921 and 1936. Natural gas, of course, is a commodity not available to the railroads for transportation, but it

directly displaces coal. Natural gas is now available at the Twin Cities, in South Dakota, in Nebraska, Kansas, Iowa, Missouri, all the big Missouri River manufacturing points, St. Louis, Chicago, Detroit, Indianapolis, Memphis, New Orleans, and many other points. The railroads have made every possible effort to combat the effect of this competition in diverting their coal traffic. (Tr. 557)

Carriers' Exhibit No. 34 presents a similar picture as to the production of crude petroleum, as to the increasing transportation of crude petroleum and refined products by pipe line, and as to the relatively diminishing proportion carried by the rails. This represents not only a relative loss in the transportation of petroleum and its products but also represents a loss in coal traffic through the substitution of petroleum. From 1931 the production of crude increased 50 per cent, whereas the total tonnage of all commodities handled by the railroads decreased 15 per cent. The transportation of crude petroleum by rail decreased practically 45 per cent and the rail transportation of refined petroleum oils decreased 9.8 per cent. But the total transportation by pipe lines increased 94 per cent. Transportation of crude oil by pipe line increased 86.5 per cent while such transportation of refined oil and gasolines increased 351.6 per cent.

There is no large volume of traffic in connection with which losses of the railroads have been quite as great as in connection with petroleum traffic. This is due to truck competition as well as to pipe line competition and, in addition, is particularly due to the re-establishment of distributing stations for the purpose and with the effect of eliminating rail transportation or reducing the extent thereof. (Tr. 562)

One of the interesting technological changes in industry which has directly affected coal tonnage on the railroads has been the striking decrease in the number of pounds of fuel consumed by steam electric plants in producing a kilowatt-hour of electricity, as shown by Carriers' Exhibit No. 35. In 1913, it took 4½ pounds of coal to produce a kilowatt-hour of electricity. By reason of technological improvements, this figure steadily decreased until in 1937 it took only 1.43 pounds of coal to produce the same kilowatt-hour.

Carriers' Exhibit No. 36 gives a general picture, in terms of total British Thermal Unit Equivalents, of the change in the United States from the use of coal, the railroad traffic commodity, to the use of oil, natural gas and water power in the production of heat units. In 1899, coal contributed 90.3 per cent of the units; oil, natural gas and water power contributed only 9.7 per cent. But in 1937, coal produced only 50.4 per cent, whereas oil, natural gas and water power contributed

49.6 per cent. That simply means in the aggregate a tremendous loss of tonnage to the railroads. (Tr. 566)

Carriers' Exhibit No. 37 presents figures for registrations of motor trucks, compared with railroad ton miles and railroad freight revenue, similar to the showing of Exhibit No. 31 as to registration of passenger automobiles. Truck registrations increased, from 1921 to 1937, 426 per cent, while tons originating on the Class I railroads showed an increase of but 8 per cent and revenue ton miles were less even than they were in 1916. The year 1937 shows a loss in railroad freight revenue of 13.9 per cent, as compared with 1921, although there was somewhat heavier business in 1937 than in 1921, which proves that the rate structure as a whole was lower in 1937.

Mr. Cleveland gave very significant testimony as to the inroads of itinerant or unregulated trucks, as distinguished from common carrier regulated trucks, especially in connection with traffic in fruits and vegetables and even in grains. (Tr. 569-570)

An interesting supplement to the showing on truck registrations is contained in the testimony of R. J. Littlefield (Tr. 1038-1065). Mr. Littlefield, Superintendent of Motor Service for the Pennsylvania Railroad, and who has had long experience in the transportation industry, testified to the results of a study showing, first, the extent to which the railroads participated in and received gross receipts from the truck and bus industry and, second, the extent and character of that industry.

He submitted Carriers' Exhibit No. 79 (Tr. 1040), which shows that, according to the Splawn Report, for-hire trucking in the United States, which includes interstate, intrastate and local cartage, amounted to $742,054,000 for the year 1936, that being the latest official estimate on the subject—regarded, however, by Mr. Littlefield as too low. Those figures do not include private truckers, of whom there are many thousands operating over-the-road service and competitive with rail lines.

He further showed that for the year 1935, the latest available figure, as contained in I. C. C. Report 3669, October, 1936, entitled "Investment of Class I Railroads in Motor Vehicle Enterprises," the gross revenue of all trucking companies affiliated with or controlled by Class I railroads was $19,579,000, which was 2.6 per cent of the official estimate just quoted from the Splawn Report. Trucking companies that were at least 50 per cent owned by a railroad had a gross revenue of $16,233,595, that sum being a part of the figure just given for the gross revenue of all railroad controlled or affiliated companies. (Tr. 1043)

From the same report, I. C. C. No. 3669, it appears that 43 per cent of the business handled by the trucking companies which produced that revenue of $19,579,000, was local cartage service; that is, trucking

within city limits or within the suburban area, much of which was hauling freight between the shipper and freight house.

The bus section of Carriers' Exhibit No. 79 shows that the total common carrier bus revenue in the United States was $466,708,000 (Tr. 1044), and that for 1935 the gross revenue of bus companies in which the railroads had an interest, no matter how small, was $52,909,000, or 11.3 per cent of the total common carrier bus business.

On page 1050 of the transcript will be found a statement from I. C. C. Report 3669 of the total investment of Class I railroads in highway transportation enterprises, on the following page a further explanation of that interest, and on page 1052 the amount of profits derived by the railroads.

So much as a side light on the extent to which railroads are subjected to motor highway competition. The showing made left out of consideration a heterogeneous multitude of truck operators who directly compete with the railroads and a large percentage of whom are not constitutionally amenable to federal regulation; a still larger percentage conduct operations of a character that it is almost impossible for the state to regulate and for which no effective regulation has yet been found.

Hints rather than constructive suggestions have been made during these proceedings that in some undescribed way the truck industry may be placed on a parity with the railroads with whom it competes.

Witness Littlefield (Tr. 1056) gives some interesting facts bearing on the magnitude and complexity of even federal regulation of a limited section of the trucking industry. As of October 3, 1938 (Tr. 1057), the Interstate Commerce Commission had received applications from 92,534 applicants for either certificates or permits to operate trucks in interstate commerce, these applications being under the Federal Motor Carrier Act of 1935, which is confined to the regulation of interstate operators; 37,000 of those applications have been dismissed, leaving 55,000 that have either been issued or are pending before the Commission. Of the total number of applications filed, 5,952 were for new rights; that is, truckers who were not on a highway when the motor vehicle law was passed, an indication of the steady increase of this form of competition. (Tr. 1060)

Carriers' Exhibit No. 81, prepared by Mr. Littlefield (Tr. 1056), shows that over 90 per cent of the operators on public highways in interstate for-hire service are small operators; that is, operators with an operation of 10 or less trucks each, and that, measured in terms of trucks, about 60 per cent of the trucks in for-hire over-the-road service are owned by small operators.

While railroad managements welcome the cooperation of railroad employees, as well as of investors and stockholders in railroads, in securing legislation and regulation to remove as far as practicable the existing unfairness of this comparatively new form of competition, yet the problem of the railroads, as we have placed it before you, is an immediate one and relief cannot be postponed in whole or in part for the coming of such legislation or to await the slow processes of administrative regulation and of enforced standardization of rates and practices of those who use the public highways commercially.

As said by Mr. Littlefield, in concluding his testimony:

> "The complexity of the problem of truck regulation even if confined to trucks of the class subject to the Motor Carrier Act, is readily apparent, and when we add to those trucks the many thousands of trucks which are not governed by the Act, including the myriad of itinerant operators who have no regular schedules or regular routes or standard charges and who operate when and as whether, traffic and their own financial conditions permit, it is seen that the problem of regulation of that competition is not a simple one." (Tr. 1058)

Carriers' Exhibit No. 38 shows the tremendous diversion from the rails of livestock traffic, based upon receipts at the seventeen largest markets. In 1916 the railroads delivered 98.39 per cent of the receipts at those markets and the trucks delivered 1.61 per cent. There has been a constant decrease in the ratio until in 1937 railroads delivered only 47.95 per cent and the trucks delivered 52.05 per cent. The index figure for railroad traffic based on 1921 was 40.4 per cent for 1937 and for trucks was 698 per cent. From his wide experience, Mr. Cleveland testified that the ratio of truck deliveries to rail deliveries at smaller markets would be even more favorable to the trucks and less favorable to the rails. (Tr. 573)

The final exhibit introduced in connection with Mr. Cleveland's testimony was Carriers' Exhibit No. 39 showing the striking increase in the commerce on rivers, canals and connecting channels in the United States as compared with tons originated on Class I railroads. On these waterways since 1921 the tonnage increased to 1936 by 137.5 per cent, while during the same period tons originated on the railroads increased only 2 per cent. It is most significantly shown by the exhibit that there was no apparent depression from 1929 to 1936 as to tonnage moving by the New York State Barge Canal. On the contrary, there was a constant increase from 2,876,000 to 5,014,000 tons.

Mr. Cleveland, after summarizing his testimony on pages 580 to 584 of the transcript, drew this ultimate conclusion:

> "The listing of these few developments which have taken place proves that the railroad industry is no longer even a semi-monopoly. Its rates must be on a competitive basis regardless of what its necessities may be. Its rates must be such as will secure for it traffic. Its costs must be kept on a basis that will permit it to make competitive rate on much of its traffic. Its rates can not be advanced substantially unless similar advances are made concurrently by its competitors. Further, it can not raise its charges to a point where such action would lead to the relocation of industry, so as to lessen the amount of transportation required in distribution, nor can its rates be advanced to a point where it would encourage industry to obtain its own transportation facilities and make its own distribution. If the railroads' costs are such as to make it impossible for them to make competitive rates, there will be less traffic for the railroads to haul and there will be fewer and fewer railroad jobs."

V.

THE REASON FOR THE PRESENT DESPERATE PLIGHT OF THE RAILROAD INDUSTRY CANNOT BE FOUND IN OVERCAPITALIZATION, EXCESSIVE FIXED CHARGES OR EXTRAVAGANT DIVIDENDS.

We are met in this case with charges that the railroads are over-capitalized, that fixed charges constitute an excessive burden upon the industry and that the payment of such charges, coupled with the payment of extravagant dividends, is responsible for the present condition of the industry. A strange doctrine is constantly reiterated by counsel for the employees. They treat the payment of fixed charges by the railroads as if it were a crime to pay interest on mortgage indebtedness. This is nothing less than a doctrine of repudiation of contracts and of repudiation of mortgage debt.

As we have already stated, the inescapable logic of the facts presented in this case calling for a reduction of wages has forced the employees to the extreme position of asserting that capital has no rights; that the relatively small interest payments on bonds guaranteed by mortgage contract should not be paid and that stockholders are entitled to no return on investment.

A most extraordinary position was taken by counsel for the employees in the cross-examination of Dr. Parmelee when, if we understood their position aright, they suggested that interest on bonded indebtedness should be scaled down from the contract-fixed percentage on par to the same percentage on the present market value of bonds. The market value of railroad bonds, whether it be low or high, has nothing whatsoever to do with the mortgage contract obligation which requires the railroads to pay the stipulated interest on the par of the bond. Unless this is done they go into bankruptcy. If these views apparently held by counsel for the employees are to prevail, it simply means utter repudiation of contract, utter repudiation of mortgage debt, and a change from our present economic system.

1. Ratio of Capitalization to Investment.

However, the showing in this case is clear that the railroad industry is not over-capitalized.

In his first report to Congress in 1934 Coordinator Eastman said, at page 3:

> "Contrary to much popular impression, the railroads are not in the aggregate over-capitalized, in the sense that the par value of the outstanding securities exceeds the money invested in the properties."

He then went on in considerable detail to ascertain or to calculate what were the values of the railroad property. At a later point, on the same page, he said:

> "The original cost of railroad carrier property would not fall below 24 billion dollars."

At a still later point, on the same page, he said that, "the net capitalization outstanding in the hands of the public was $19,489,062,256." Coordinator Eastman compared the figure of 24 billion odd with the net capitalization of 19 billion odd then outstanding. By "net capitalization outstanding" is meant the par value of stocks and bonds in the hands of the public, eliminating inter-corporate holdings within the railroad industry, a figure constantly used by the Interstate Commerce Commission and by the Coordinator in measuring the extent of capitalization. We shall come back in a moment to this question of inter-corporate holdings. (Tr. 294)

Continuing his analysis, the Coordinator in the same report stated that the Bureau of Valuation of the Interstate Commerce Commission had estimated or calculated the cost of reproduction new of railroad properties less depreciation plus land value and working capital at about $20,971,000,000. Even this conservative depreciated figure is about a billion and a half dollars more than the net capitalization in the hands of the public.

The latest pronouncement of the Commission on this point is to be found in its decision in Ex Parte 123, March 8, 1938, 226 I. C. C. 57. On that page the Commission made this statement:

> "The net capitalization of all steam railroads in 1935 was but 71.9 per cent of the recorded investment in road and equipment before depreciation and 80.6 per cent after deducting depreciation reserves. There has been a steadily declining trend in this percentage."

This means there has been a steadily increasing spread between the outstanding net capitalization and the recorded investment on a depreciated basis. (Tr. 297)

The above quotation from the Commission continues:

> "For 1911 after deducting depreciation the figure was 97.6 per cent."

The margin of investment, as found by the Commission in this report, after depreciation, was greater than the net capitalization by nearly 20 per cent.

It is not contended that this figure described as net capitalization, which is the par value of the bonds and stocks outstanding and in the

hands of the public, is the exact equivalent of the amount of money originally invested by the public in the railroads and there is no possible way precisely to ascertain what the original investment by the public in the railroads was. (Tr. 298-299)

This does not mean, nor is there any implication that the investment recorded on the present books of the Carriers is in excess of actual investment. It is simply the historical fact that the railroad investment began a century or more ago and it is recognized that no current record of all investment over the full period of the last one hundred years has been preserved. Indeed, we do know that as a result of the receiverships through which so many large railroad systems have passed, great amounts of investments were wiped out.

On page 22 of the Splawn Report it was stated that the net book investment of railways of Class I on December 31, 1936, was $23,061,500,000, meaning investment in road and equipment as shown by the books, less depreciation so far as accrued on the books, plus cash, materials and supplies (working capital). The net capitalization on the same date was shown to be $18,335,887,000.

The later figures found by the Splawn Committee showed net investment was greater than net capitalization by more than $4,700,000,000. In other words, there had been a slight increase in the spread between 1932, the date of the Coordinator's first report, and March, 1938.

Carriers' Exhibit No. 16 is an assembling into one place of several of these figures as of the latest date, from official sources, which are available at the present time. The exhibit shows first the total property investment of all line haul carriers of the United States as of the beginning of 1937, which was $26,298,254,000. The next item is the cost of reproduction new (not depreciated) as found by the Interstate Commerce Commission in Ex Parte 123, which is $28,261,997,000.

The Commission in the same decision found a value for the carrier properties of all the carriers of the United States for rate making purposes, and that appears as the third line and figure in Exhibit 16 under the title "Valuation of Railroad Property After Allowance for Depreciation, as Found by the Interstate Commerce Commission in Ex Parte 123." That figure is $20,340,000,000. The final item is taken from the latest statistics of railways, published by the Commission, as of the beginning of 1937, and which shows net capitalization in the hands of the public on that date as $18,336,000,000. That is the same figure just quoted from the Splawn Report and evidently taken from the same source.

The Commission's figure of $20,340,000,000 was arrived at by it after making allowance for depreciation and applying other very conservative adjustments to the various items of cost. (Tr. 301)

Even this very conservative value is more than $2,000,000,000 in excess of the net outstanding capitalization of the carriers.

In addition it must be remembered that the net outstanding capitalization reflects more property than the property valued by the Commission in Ex Parte 123, or $20,340,000,000. That value applies only to carrier transportation property and does not apply to any lands or other properties not used for transportation purposes, nor does it apply to any outside investments or other non-carrier assets of the carriers.

The value of those outside properties added to the value of the carrier properties would greatly increase the spread between that figure and net capitalization. (Tr. 302)

For every dollar of value found by the Commission of carrier property alone, there were outstanding only 90.1 cents of net capitalization and that capitalization covers much more assets and property than is represented by the value of the carrier property alone in the dollar. (Tr. 303)

Not only is this true as of the beginning of 1937, but over a long period of years the trend has been to leave a steadily growing margin between outstanding capitalization and investment in property.

Carriers' Exhibit No. 17 shows this trend as drawn from the annual statistical reports published by the Commission. As of June 30, 1910, the first year for which these figures are available, the ratio of net capital to investment was 98.7 per cent or $987 of capital outstanding to a thousand dollars of investment. That 98.7 per cent gradually declined, and quite steadily declined during the years from 1910 to 1937, and in the later year reached 71.5 per cent or $715 of capitalization as against a thousand dollars of investment.

Stated differently, for the year 1910, as shown by the chart at the right of the Exhibit, $606 represented the net amount of bonds outstanding per $1,000 of investment; $381 represented stocks outstanding, and the sum of these two figures, or $987, was the total capitalization outstanding per $1,000 of investment, leaving the balance or margin of $13 per $1,000 of investment. But for 1937, the $606 of bonds had declined to $439 and the $381 of stocks had declined to $276, making a total capitalization outstanding of $715 for each $1,000 of investment, thus leaving a balance of investment above capitalization of $285.

In this connection it is important to remember that since 1910, the very period covered by Exhibit 17, the investment accounts of the railroads have been under the general supervision of the Commission and have been carefully policed by it. During that period the investment in road and equipment was increased by more than $11,000,000,000, from $14,558,000,000 to $25,636,000,000. Thus, it will be seen that as to a very large part of the investment in road and equipment, there is

every assurance that the book figures reflect exactly the money actually put into the property. With respect to the investment in road and equipment account as it stood in 1910, at a figure of $14,558,000,000, while it is not possible to make an accurate check, there is no reason for assuming that the investment account showed a larger sum than had been actually spent on the plant. It will be noted that Coordinator Eastman, in his first 1934 report, stated squarely, as above quoted, that, "The original cost of railroad carrier property would not fall below 24 billion dollars." During the years just prior to the enactment of amendments to the Interstate Commerce Act which vested supervision in the Commission, widespread criticism of railroad accounting was to the effect that large sums that were expended for capital account were charged to operating expenses. The contention was that in this way operating expenses were inflated and thereby reductions in transportation rates were retarded.

Carriers' Exhibits 2 and 3 show the return which the Carriers are currently earning on the investment. For the year ended June 30, 1938, the rate of return was 1.39 per cent and for the first eight months of 1938 the return was at the rate of 99/100 of one per cent. If the return is computed on the Commission's depreciated valuations as found in Ex Parte 123, the results are a return of 1.81 per cent for the fiscal year ended June 30, 1938, and at the annual rate of 1.29 per cent for the first eight months of 1938. (Tr. 308, 310-311)

Carriers' Exhibit 18 is an approach to the same question but from a different angle, that is to say, it is a comparison of trends over a period of years. It shows the situation as of the beginning of 1921 and to the end of 1937. During that period of seventeen years the total or aggregate amount of gross capital expenditures by the railways was $9,570,875,000. That is the aggregate of the gross expenditures, the actual money put into new equipment, new structures, improvements of all kinds, capital rebuilding of equipment, and all purposes for which capital charges have been made in accordance with the accounting rules of the Commission. (Tr. 313-314) The next line of that Exhibit shows the net increase in the investment was only $5,787,000,000. The difference between the gross capital expenditures of $9,570,875,000 and the net increase in investment of $5,787,000,000 is due to the writing out of the books, during the period, of equipment retired, property abandoned and other changes of that kind. (Tr. 314) The third line headed "Net Capital in the Hands of the Public" is a comparison of the outstanding par value of stocks and bonds as of the beginning and end of the same period, the net increase during the period being only $1,325,000,000, only about one-fourth as large an amount, 23 cents per dollar to be exact, as the net increase in the road and equipment account.

This means that while the carriers were making a net increase in their investment account between 1921 and 1937 of $5,787,000,000, they added to their securities outstanding in the hands of the public only $1,325,000,000.

In these connections it is again important to recall that 54 per cent of the present outstanding total of railroad bonds have been issued since June 28, 1920, when Section 20a of the Transportation Act of 1920 became effective. Since that date every issue of stocks or of bonds has been specifically approved by the Interstate Commerce Commission before it could be made legally effective. Every large company of Class I has made issues of either stocks or bonds during that period. (Tr. 316-317). In every such instance the Commission has made a careful review of the capital structure, certainly has made such review of every large railway company in the country since 1920, before it has given its approval to the issuance of any stocks or bonds. Before granting such approval the Commission makes a very careful inspection and survey of the whole capital structure of the company, of the purposes of the particular issue, of the terms under which the issue is to be made, and finally makes a substantive finding that the issue is for a legitimate purpose and is not incompatible with the public interest. (Tr. 317)

Furthermore, it should not be overlooked that the issuance of railroad securities in the case of most Carriers had been subject to governmental supervision for many years prior to the enactment in 1920 of the Transportation Act. This was so, for the reason that in the states of the incorporation of most of the railroad companies, statutes, enacted many years prior to 1920 had invested supervision over the issuance of railroad securities in Public Utility or similar State Commissions.

In connection with the cross-examination of Dr. Parmelee, there was elaborate discussion of the fact that in the statements of the Commission and by Coordinator Eastman regarding alleged over-capitalization, the figure of net capitalization in the hands of the public does not include inter-corporate holdings of railroad securities within the industry. But we think that Dr. Parmelee's testimony made it abundantly clear that the Interstate Commerce Commission is right and that Coordinator Eastman was right in eliminating these inter-corporate holdings from what amounts to the general balance sheet of the industry in testing the question of over-capitalization or under-capitalization.

Inter-corporate holdings such as those now amounting to $5,666,-000,000 (1936) have always been deducted by the Interstate Commerce Commission in order to arrive at the total outstanding capital in the hands of the public in measuring the question of over- or under-cap-

italization. That total of $5,666,000,000 includes an item which the Commission terms "Capital nominally issued and nominally outstanding" of $2,041,000,000. They are purely treasury securities held by or for the issuing company, and never delivered so as to become an outstanding liability or appear on the balance sheets. They carry no interest and accrue no dividends. They are not actually issued or sold. Or, if they have been sold at any time, they have been re-acquired by the issuing company and are held as treasury securities. (Tr. 424)

Of course, securities of this type are not in the capital structure at all and yet they are included in the $5,666,000,000 of inter-corporate holdings. (Tr. 426) The remainder of the $5,666,000,000 of inter-corporate holdings is $3,625,000,000 and those represent securities which have been issued and are outstanding but are owned by other railroad companies than the issuing companies.

Those are truly inter-corporate holdings within the industry. The Commission deducts these two groups, treasury securities and intercorporate held securities within the industry, from the total outstanding par value of the capital securities of all railways in order to arrive at a figure which the Commission itself has for very many years published annually and denominated "Net Amount Not Held by Railway Companies." (Tr. 426-427)

The Commission has repeatedly stated that this is the amount outstanding against the railways in the hands of the public, considering the railways as a single system, as though all the railways had been consolidated and a consolidated balance sheet had been set up for them. (See quotations from various reports of the Commission on Pages 427-428 of the Transcript.)

When one considers the industry as a whole, the amount outstanding in the hands of the public, eliminating the nominal or treasury held securities and the inter-corporate holdings within the industry, is the proper measure of railroad capitalization. That would be what would be set up on a consolidated balance sheet of all the railways, taken together, if they were brought together and set up as a single system. (Tr. 436)

Thus considering the entire industry as a whole, whatever interest is paid by one company to another company on securities held by the second company, while it constitutes the payment of fixed charges by the paying company, it also constitutes a receipt of income from other sources by the payee company and there is a complete wash-out or cancellation as to the industry as a whole. It is only the securities outstanding and in the hands of the public which can be considered the proper measure for testing whether the industry is over-capitalized or under-capitalized. (Tr. 436)

It results, we submit, most conclusively that the railroad industry is not over-capitalized.

It must be apparent that under present conditions, all talk of over-capitalization in the railroad industry is beside the point. For the first eight months of the year 1938, earnings fell short by $182,000,000 of meeting fixed charges. When it is realized that funded debt as of December 31, 1937, equals only 43.9 per cent of recorded investment (Carriers' Exhibit 16), the irrelevancy of any exhaustive analysis of railroad capitalization becomes obvious.

2. Interest Charges on Funded Debt.

A very large part of the capitalization of railroads consists of funded debt. According to the Splawn Report, page 23, the capital of Class I railways at the beginning of 1937 consisted of 55.5 per cent of funded debt and 44.5 per cent of capital stock.

The average interest rate on the outstanding bonds at the present time is only about 4.5 per cent per year, and the interest charges on all those bonds can be met by the carriers of Class I each year if they earn as much as 2 per cent on their property investment, that is, if they have an average rate of return of 2 per cent. (Tr. 319)

Indeed, the railways in the past have tapped the low-interest reservoir of available funds for investment and have obtained the use of capital in that way at a lower cost than could have been obtained probably by the use of other methods of financing through capital stock. In this connection it is highly interesting that over a long period of years the amount of the railroad funded debt, and the amount of interest charges, has not increased in relation to the size of plant or in relation to railway revenues. (Tr. 319-320)

The Splawn Report said at page 43:

> "There is some misunderstanding of the fixed-charge situation and its significance. Many seem to think that these charges represent an unjust burden, and that if it could be removed, all would be well. The fact is that these charges constitute a comparatively modest return on only a part of the legitimate investment in railroad property. There is nothing unjust about this return. The objection to it lies in the contractual obligation to pay regardless of conditions, thus making it difficult for the railroads to weather our periodical business depressions."

Commissioner Eastman, in an address last June before the Harvard School of Business Administration, spoke of the assumption made by some people that railway debt constitutes an unjust burden from which the country ought to be relieved. He then added:

> "The fact is that debt is a normal incident of any business as well as of the Government of the United States. For many reasons

which I cannot now take time to discuss, it is true that the railroads or many of them have debt of proportions too large for safety in conditions of great financial stress, as they are now experiencing. On the other hand, if they were able to earn anything like the return which the constitution gives them the right to earn, if they can, they would have no difficulty with the debt."

In his report as Federal Coordinator in 1935, at page 35, he said, speaking primarily of the burden of interest charges:

> "Nor is the interest rate high on the railroad debt. The average rate is about 4½ per cent. Only a few railroads are paying dividends and more than a billion and a half of bonds are in default. It is impossible to support a claim that an extortionate return, or anything approaching such a return, is now being exacted on the money which has gone into the railroads."

We submit that these authoritative statements prove that the funded debt of the carriers is not an unfair burden and that their interest charges under any normal conditions do not constitute a heavy burden on the revenues of the carriers.

Besides, the railroad industry as a whole is not at this time paying in full its interest charges on funded debt, as reasonable as those charges are as a whole.

Carriers' Exhibit 19, witness Parmelee, shows the facts with reference to interest accruals, interest payments, and shortage of payments under accruals for Class I railways from 1930 to 1937.

During each of these eight years there were large shortages or deficiencies of payment which exceeded $100,000,000 in each of the last three years and which for the whole eight years exceeded $545,000,000. Interest in default on December 31, 1937, for as long as 90 days amounted to $606,882,427. Two things stand out on the chart on the right of Exhibit 19. The first is that total interest accruals of the carriers have shown a fairly steady decline during the period from 1930 to 1937, especially in the last three or four years. The second is, that the deficiencies or defaults in payment have shown a very general increase. In other words, out of the smaller interest accruals of the carriers in recent years they have failed to pay larger amounts and proportions of interest due. (Tr. 728)

During the year 1938 one or two of the larger companies of Class I have gone into the hands of trustees because of the fact that they have failed to meet and defaulted on their interest charges. That was subsequent to the showing on Exhibit 19. (Tr. 329)

3. Dividend Payments.

There are some companies which have paid dividends in the last few years, but taking the capital stock outstanding as a whole the rate of dividends being paid in 1938 is only about 1 per cent. Carriers' Exhibit 20, witness Parmelee, shows the pertinent facts as to dividend payments from 1921 to 1937 and for the first seven months of 1938.

This exhibit shows that in only about one year of that period of over eighteen years did the average dividend rate equal or exceed 6 per cent. Since 1930 there has been a great decline in the amount of dividends, and for the present year, based on the returns of the first seven months, the dividend rate will barely exceed 1 per cent.

The average dividend rate for the years 1921 to 1930 was 4.87 per cent per year. From 1931 to 1938 the annual average dropped to 1.84 per cent, and in 1938 it stands at 1.08 per cent based on the first seven months.

Thus it is plain that the present desperate plight of the industry cannot be attributed to extravagant or excessive dividend payments to the owners.

4. Both Bondholders and Stockholders Have Suffered Greatly.

Much is said by the employees in this case to the effect that railroad workers are not responsible for the financial condition of the railroads and that bondholders and stockholders should "take a cut." Both classes of security holders, however, have already taken prodigious cuts.

There has been a very marked depreciation in the market value of both railway bonds and railway stocks. The facts are shown by Carriers' Exhibit 21.

Exhibit 19 showed over the period of 8 years, from 1930 to 1937, that the owners of outstanding bonds of Class I railroads received a total of $3,296,000,000 in mortgage interest. Those were the actual payments received. But the bondholders suffered losses at the same time in the form of reduced market value of their holdings far in excess of the total amount received as interest during the period.

Exhibit 21 shows the par value of all listed railway bonds on the New York Stock Exchange in 1938 as $10,547,000,000. The average market price per $100 for the latest date in 1938 available, August 31st, was 55.92 as compared with 95.59 for the same date in 1930. Applying that decline to the total listed par value, the bondholders have suffered an aggregate decrease in market value over that period of $4,183,000,000. That figure is $887,000,000 more than the total amount of interest received by the holders of the same bonds during the same period.

The same exhibit shows corresponding statistics as to the stocks. The average price per share of stock has declined from $91.56 on September 1, 1930, to $26.06 on August 31, 1938, a decrease of $65.50 per share. Applying that to the total number of stocks listed, some 94 million shares in all, the aggregate decrease in the market value of railway stocks through that period was $6,181,000,000.

Holders of railroad stock during this same period have received total dividends of $1,613,000,000. But in the same period the stockholders have suffered a loss in average market value of $6,181,000,000 or something more than $4,500,000,000 in excess of the total amount of dividends received during the period.

There is more significance to this exhibit than the mere fact that bondholders and stockholders combined have suffered an aggregate loss in market value of securities of over $10,000,000,000 between 1930 and 1938. This exhibit very clearly points out that railroads have, generally speaking, virtually lost their credit and are facing a credit crisis today.

The Splawn Report recognized this credit crisis. On Page 29 it said:

> "The continuing decline in the spread between revenues and expenses along with the current loss of traffic have, generally speaking, resulted in the destruction of railroad credit. Few railroads are in a position to borrow."

Of course, the startling decline in market value of railroad stocks and bonds above referred to is simply the estimate which the combined judgment of the market place puts upon the present desperate financial condition of the railroads resulting from the decline in traffic and the decline in the spread between revenues and expenses.

VI.

AVERAGE EARNINGS OF RAILWAY EMPLOYEES AND THEIR TREND SINCE 1916.

The basic theory of the employees in this case, and there is no dispute by the carriers of this theory, is that the employees are entitled to earn a fair living wage for their work for the industry. While, as we have said, what is a fair living wage is not a question of legal or ethical abstraction and is not susceptible of mathematical measurement apart from general business conditions and conditions of the industry, the significant thing is that hourly rates of pay have no direct relationship to the earning of a fair wage. An hourly rate of pay is merely a contract promise to pay a given rate of money for a given hour of work. It carries no guarantee of how many hours work will be offered. A worker cannot live on a contract promise to pay an hourly rate. What bears on the question of whether a living wage is earned is the question of average earnings; average earnings per week, per month, or per year. It is the total amount of money paid the employee within a given period of days, weeks or months which provides him his living and measures the standard upon which he can live. Thus, for instance, it is universally recognized among economists that average weekly earnings of workers are far more significant as bearing on their general welfare and on the question of whether they earn a living wage, than the mere question of hourly rates *per se*.

1. The Interstate Commerce Commission Figures on Average Compensation for Railroad Employees.

For many years, the Interstate Commerce Commission has collected data regarding the number, compensation, and occupational classification of steam railway employees. This is done pursuant to Section 20 of the Interstate Commerce Act which authorizes the Commission to require annual reports from all the common carriers and which provides that such annual reports shall show in detail, among other things, "the number of employees and the salaries paid each class * * *." Reports covering such information are filed under oath by the carriers, are checked by the Commission and are compiled under rules and regulations laid down by the Commission pursuant to the statute. (Tr. 647)

We have offered in evidence as Carriers' Exhibit No. 40, witness Monroe, the complete set of rules, orders, regulations and instructions of the Commission covering such reports.

Based upon these sworn reports the Interstate Commerce Commission computes and publishes what it terms average compensation

per employee for railroad employees. These figures are published in its annual statistics of the railways in the United States. The averages are computed by dividing the total wages actually paid by the average number of employees during the year. The average number of employees is obtained by averaging the twelve mid-month counts during the year.

Carriers' Exhibit 41, witness Monroe, shows, from 1916 through the year 1937, the exact figures which are published by the Interstate Commerce Commission, the average number of employees according to the mid-month count, the total compensation paid to all employees by the carriers (Class I railways) and the average compensation per employee, which is arrived at by dividing the total compensation to employees for each year by the average number of employees according to the mid-month count for that year. The figures presented on Exhibit 41 for the years 1916 through 1936 represent no calculation by the witness but are a mere reproduction of the figures published by the Commission. (Tr. 650)

The figures presented for the year 1937, for the first six months of 1937, and for the first six months of 1938, had to be calculated by the witness because of the fact that the Commission has not as yet issued its annual statistics of railways for those years. However, it has issued a preliminary abstract of the statistics in which it gives the basic facts upon which the simple mathematical computation must be made, that is, it has already published the mid-month counts of employees and the total compensation paid to employees. Accordingly for these last three periods the witness Monroe merely made the mathematical computation by dividing the total compensation by the average number of employees according to the mid-month counts making exactly the same mathematical calculation which the Commission has made for each of the years from 1916 through 1936. (Tr. 650)

In addition to the mid-month count, two other employee counts have been required at different times by the Commission. From July 1, 1921, to December 31, 1932, the carriers were required to report the number of "full opportunity positions." The full opportunity positions' count represented the number of employees required if each worked the full time he was given the opportunity to work. This count was discontinued on January 1, 1933, and a new count was inaugurated, calling for the number who received pay during the month, and that item has been reported each month since that time. This is known as the "All names on the payroll count," and the rules with respect to it are included in Exhibit No. 40. (Tr. 652)

The only count which has been kept over a long period of years, and hence the only count available for use for the purpose of showing trends, is the so-called "middle of the month count." (Tr. 652)

The "full opportunity count," which was kept for a number of years until January 1, 1933, resulted in a count of a smaller number of employees than the middle of the month count, so that if the average annual compensation per employee were calculated on the basis of the full opportunity count, by dividing that count into the total compensation paid by the carriers higher average earnings would be shown than those actually shown on Exhibit 41 which is based on the use of the middle of the month count. (Tr. 653)

It is important to consider carefully how this middle of the month count is made and what its significance is. The mid-month count is taken on the 15th day of each month or if the 15th falls on a Sunday or a holiday, on the next preceding business day. Since July 1, 1921, the mid-month count has been taken in each of the twelve months of the year. From 1915 to July 1, 1921, the count was made quarterly, and prior to 1915 was made only once a year. The mid-month count includes, as to train and engine service employees not only all those persons in actual service but also all those available for duty on the middle of the month. This includes regularly assigned men, even though they may not be actually working on the date of the count, plus all men on the so-called extra list, whether or not they are actually working on the day of the count. In other words, the purpose and effect of this count is to include all those men, on the average, who are necessary to operate and protect the service of the carriers. (Tr. 655)

As to non-operating employees, the mid-month count includes all those persons who occupy regular assigned positions on a full-time schedule. In this case the count is made of those under pay on the 15th or the last preceding working day. For those employees who work on a regular part-time schedule, such as working every other day, or four hours each day, the count includes all persons working in the week or payroll period ending nearest the 15th. Since this group includes those part-time employees who work on a regular part-time schedule throughout the month, in effect it includes every person in this group and the count is made for the week or payroll period in which they work nearest to the 15th of the month. This constitutes a full count of regular part-time positions. (Tr. 655-656)

As to persons who work part time, but who do not work on a regular part-time schedule, such as those working in shops, which are open some weeks in the month but not on others, the count includes all employees working on the last full working day prior to the 15th. (Tr. 657)

As to the persons who are employed from day to day as they may be needed, such as dock laborers, the count is made to include the number actually under pay on the 15th or the preceding working day. In addi-

tion there are casual workers employed from day to day as needed in an employment which fluctuates greatly, such as casuals employed for flood work and other emergency work. In the case of these the count includes the average number under pay per working day during the entire week which precedes the 15th day of the month. For instance, if there are 100 casuals on one day, 150 on another day, and 50 on the third day, but none employed on any one of the other three days in the weeks immediately preceding the 15th the count would indicate 50 such men. (Tr. 657)

These rules of the Commission with reference to part-time workers and casuals are designed to prevent distortion which might otherwise result from taking only one day in the month for the count. The rules are designed to include within the mid-month count the average number of employees, including part-time workers and casuals, necessary to operate and protect the requirements of the service. (Tr. 657)

Returning to Exhibit 41, it shows for each of the calendar years 1916 to 1937 inclusive, and for the first six months of 1937 and 1938, the average number of railway employees based on the mid-month count, the total compensation paid all employees, and the average compensation per employee. The figures cover employees of all classes, including executives and officials, as well as employee classes not represented in this proceeding, and cover Class I railways. (Tr. 658-659)

The exhibit places before the Board a complete picture as to the total number of railway employees of all classes, together with their average annual earnings as shown by the reports of the Interstate Commerce Commission. Subsequent exhibits are confined to corresponding data for only those occupational classes involved in this present proceeding. (Tr. 659) Approximately 93 per cent of the total number of employees is included in this proceeding and they receive approximately 89 per cent of the total payroll. (Tr. 660)

Remembering the history of prior wage movements which we outlined in the second point of this Brief, *supra* pages 9-19, certain highly interesting facts will be drawn from Exhibit 41 and from the column covering average compensation for employees. It will be seen that as a result of the large wage increases in 1918 by the Federal Director General's General Order No. 27, average compensation for employees rose from $1,003.81 in 1917 to $1,419.34 in 1918 and $1,485.89 in 1919. As the result of the accumulation of the wage increases under General Order No. 27 in 1918 and of the further increases under the Labor Board's Decision No. 2 in 1920, average compensation per employee rose in 1920 to $1,820.12.

As the result of the accumulated effects of the smaller decreases in 1921 and in 1922 under the decisions of the Labor Board in those years,

average compensation per employee declined to $1,666.28 in 1921, to $1,623.29 in 1922, to $1,617.11 in 1923, and to $1,613.47 in 1924.

Since 1924 as a result of general wage movements hereinbefore discussed, the average compensation per employee has almost steadily risen, with reductions from 1932 to 1935, reflecting the voluntary 10 per cent deduction and its gradual restoration, and since 1935 have increased to $1,781.21 in 1937 and to $918.88 for the first six months of 1938, or at the annual rate of $1,837.76, the highest average annual compensation per employee in history.

Carriers' Exhibit 42, witness Monroe, shows the 128 occupation divisions into which the Interstate Commerce Commission classifies railway employees. These occupational divisions have been divided into two principal parts on the exhibit, showing 106 out of the total of 128 classifications as the classes of employees involved in the present wage movement, which comprise 93 per cent of all railway employees and who receive 89 per cent of the total payroll, the other group listed on the exhibit being those classes of employees not involved in the present proceeding.

Carriers' Exhibit No. 43 is similar to Exhibit No. 41, with the difference that it covers only employees involved in this case. It shows the average annual earnings based on the mid-month count calculated on exactly the same basis used by the Interstate Commerce Commission. The basic data on which the mathematical calculations were made were compiled and published by the Commission. The figures shown on this Exhibit are comparable over the course of the years. (Tr. 663)

This exhibit shows average annual earnings for 1937 of employees involved in this proceeding to be $1,702, as compared with the average of $1,781 for the same year for all railway employees. The chart at the right of Exhibit 43 pictures the trend of these annual earnings from 1916 to 1937, the average for 1937 only partially reflecting the wage increases of August and October, 1937. The chart clearly shows that average earnings for 1937 stood much higher than for the years 1932 and 1933, higher than for 1929, and higher than for any other year except 1920. We shall later show that on the basis of the comparative cost of living the earnings for 1937 are far above those for 1920 and that the earnings for 1938 are 36 per cent greater in real wages than in 1920. (Tr. 665)

All the tables and charts introduced by the witness Monroe deal only with money wages and therefore do not take into account at all changes in the cost of living. They are, however, the basis of the later testimony and exhibits of the witness King, in which are computed the real wages, which do take into account not only changes in money wages but also changes in the cost of living. (Tr. 664)

Carriers' Exhibit 44 shows average compensation per employee per week based on the mid-month count of the Interstate Commerce Commission. The only difference between it and Exhibit No. 43 is that the averages on Exhibit 44 are reduced to a weekly basis. The chart of course shows exactly the same trend as the chart for average annual compensation. This exhibit further shows that the weekly earnings for the first six months of 1938 were $33.73, as contrasted with weekly earnings for 1937 of $32.63. Weekly earnings for the first six months of 1938 were 3.4 per cent greater than for the year 1937.

In order to get a more exact comparison, Carriers' Exhibit No. 45, witness Monroe, compares the weekly earnings for the first six months of 1938 with the corresponding six months of 1937 and also with the first six months of 1929. This exhibit shows the average compensation per employee per week during each of these six months' periods, $32.16 for 1929, $32.19 for 1937, and $33.73 for 1938. The increases granted in August and October of 1937 are included in the averages shown by the previous Exhibit 44, but since they were in effect only for a portion of the year 1937, the average for 1937 on that exhibit only partially reflects the effect of the increases. The comparison on Exhibit 45 gives a more accurate measure of the effect of those wage increases. Average weekly earnings in the first half of 1938 were 4.8 per cent greater than in the same months of 1937, and 4.9 per cent greater than in the corresponding period of 1929. (Tr. 669)

Carriers' Exhibit 46 presents a statement dealing with the hourly earnings of railway employees involved in this proceeding. It is headed "Average Compensation per Hour Actually Worked or Held for Work." This differs from previous exhibits in that the averages represent hourly compensation rather than annual or weekly compensation. The averages were derived by dividing total compensation by the number of hours actually worked or held for work. These averages are computed without any reference to the middle of the month count, but are obtained simply by dividing the total payroll for the year by the actual total number of hours worked or held for work as shown by Commission figures. (Tr. 671)

Total compensation per hour averaged 27.5 cents in 1916, 66.6 cents in 1920, 61.3 cents in 1924, 66.3 cents in 1929, 62.6 cents in 1933, 71.6 cents in 1937, and 75.9 cents for the first six months of 1938. Average hourly compensation per hour actually worked or held for work, during the first six months of 1938, is far greater than at any time in railroad history, being 176 per cent greater than in 1916, and 14.5 per cent greater than in 1929. The average for the first six months of 1938 is 21.2 per cent greater than in the year 1933, or an increase of more than one-fifth in the hourly compensation.

Carriers' Exhibit No. 47, witness Monroe, is a statement with respect to hourly earnings similar to Exhibit No. 45 with respect to weekly earnings, dealing with the first six months' period in 1929, 1937 and 1938. It shows average earnings per hour actually worked or held for work for those three periods. Averages for the full year of 1937 reflected in part, but only in part, the wage advances granted in August and October, 1937. The comparison of averages for the first half of 1937 and the first half of 1938, on Exhibit No. 47, show the levels of earnings per hour before these advances and after these advances. (Tr. 673)

Hourly earnings for the first six months of 1938 averaged 75.9 cents, an all-time peak, as compared with 69.8 cents per hour in the first half of 1937, and 66.2 cents in the first half of 1929. In other words, compensation per actual clock hour worked or held for work in 1938 was 6.1 cents or 8.7 per cent greater than in 1937, and was 9.7 cents or 14.7 per cent greater than in 1929.

This average hourly compensation is affected by three factors: (1) changes in the rate of pay; (2) increase in the speed of trains; and (3) changes in the composition of the forces. A test made by the witness Monroe shows that between 1929 and 1938 changes in the composition of the forces would increase the average hourly compensation by less than 3 per cent. (Tr. 694-697)

2. The Railroad Retirement Board's Study for 1937 Strongly Corroborates the Interstate Commerce Commission Mid-month Count Figures.

The Railroad Retirement Board has very recently completed a study purporting to show the earnings of all railway employees whose names appeared on the payrolls of the carriers at any time during the year 1937 (Class I railroads). This study has been highly publicized by the employees who assert that it is the first study ever made which shows actual average earnings of railway employees, and their theory of the present controversy is largely predicated on a contention that this Retirement Board study discloses average annual earnings of only $1,115 as compared with the Interstate Commerce Commission mid-month count average earnings figure of $1,781.21 for 1937.

We think we have conclusively demonstrated on the basis of the Retirement Board's study itself two things: (1) that it does not show average annual earnings for 1937 of $1,115 or of any such figure for persons who may be said to be attached to the railroad industry, for persons who have reasonably regular employment in the railroad industry, or for persons who really substantially gain their livelihood from work in the railroad industry; (2) that the Retirement Board's

study on the contrary strongly corroborates the Interstate Commerce Commission middle of the month count figure of average annual compensation.

The Retirement Board's study is offered in evidence as Carriers' Exhibit No. 48, which is an exact photographic reproduction of the document prepared and furnished by the Retirement Board. (Tr. 675)

The Railroad Retirement Board administers the Railroad Retirement Act of 1937, by the terms of which Act that Board receives from each railway a report of the amount of compensation paid each month to each employee whose name appears upon the payroll but only up to total compensation of $300 per month per man. Thus if an employee receives $350 as his total compensation for the month he would be reported to the Retirement Board as receiving only $300. (Tr. 676)

From these reports the Retirement Board has compiled the study shown by Exhibit 48, and some extremely interesting conclusions are to be drawn from this exhibit.

The Retirement Board does not obtain data to show how many hours or days any employee worked during any month. Thus an employee working only one day within one month is counted equally with an employee who worked full time during the month and a man who worked one day in the year 1937 is counted equally in the study with the man who worked 300 days in the year. (Tr. 678)

The total number of employees listed in the second column of the exhibit as 1,740,799, includes persons employed, for instance, for one or a few days in 1937, such as casual snow shovelers, casual dock laborers, casual emergency flood workers, special clerical workers and extra maintenance workers.

Also, in instances where two or more men held the same job during the year, because of death, illness, voluntary separation from service, discharge for cause, or retirement, each man holding the job, the man leaving the service and the new man taking his place would be counted as separate employees in the Retirement Board's study, although only one job is involved. (Tr. 678)

These casual workers may work on many different jobs with many different industries during the course of a year only one of which may be a railroad company. Neither the railroad company nor the Retirement Board has any record of what those casual workers earn in all of their various occupations during the year. These men cannot be said to be attached to the railroad industry, nor can they be said to be attached to any other industry. It is well known that many of them are nomadic or "floating" workers. (Tr. 678-679)

The 1,740,799 employees receiving pay, no matter how small and no matter for how few days, from the railroads in 1937, earned a total of

$1,941,046,000, exclusive of earnings of any single individual of more than $300 per month. (Tr. 679)

As indicating the extent of the inclusion of casuals in this study it will be noted that 109,935 men earned less than a total of $10 in the entire year. It is perfectly obvious that these men do not look to the railroad industry for a living and that they are not attached to the railroad industry. Also, it will be noticed that 231,534 men worked in only one month of the year and earned only an average of $20 in the year. These obviously are purely casuals who cannot be said to be attached to the industry. And counsel for the 18 organizations, Mr Hay, expressly admitted this on cross-examination. (Tr. 710)

Less extreme, but in the same category, are men who received less than $100 during the year or men who received less than $300 in the year. The study shows that 522,841 men received from the railroad industry less than $300 in the year 1937 as shown by the second column of Exhibit 48.

This demonstrates that the average earnings of $1,115 shown at the foot of the second column of the exhibit as the average annual wages of the 1,740,799 employees on the payroll is not a representative average annual earning for the regular railroad worker or for the railroad worker having reasonably regular employment or for the man actually attached to the railroad industry. It does not indicate the average earnings of those who look to the industry for a livelihood. (Tr. 681)

This figure of $1,115 does not even indicate the average income of the 1,740,799 men whose names appeared on the payroll during the year, because it takes no account of the total earnings of these men but only of such earnings as they received from railroads. (Tr. 681)

Referring again to the last column showing 231,534 men who received pay during only one month of 1937, a total of $4,607,000, or an average of only $20 per man for the year, that average within itself shows that those men not only worked in only one month of the year but that they only worked two or three or a few days in the month on the average. (Tr. 681-682)

The sum of the last two columns of the exhibit shows that 358,410 men received pay in not more than two months of the year and that their average compensation was only $37 for the entire year, so that they plainly only worked a few days in each of those two months on the average.

The last three columns of the exhibit shows a total of 436,756 men receiving pay in not more than three months of the year and their pay only averaged $60 for the year, showing plainly that on the average they worked only a few days in each of the three months. Such men

of course are not the men relying on the railroad industry for a livelihood and cannot be considered as men attached to the industry. (Tr. 682)

The outstanding feature of the exhibit is to be found in the figures appearing in the third column from the left. This shows that 917,900 employees, who worked at some time in each of the twelve months of the year, earned $1,638,455,000 in total compensation, or an average of $1,785 each for the year. Even these men did not necessarily work full time throughout each month. But these 917,900 employees earned 84 per cent of the total compensation paid by the railways in 1937 to all persons. If wages are reduced, 84 per cent of the entire reduction will come from these men who averaged $1,785 earnings for the year. And it will be recalled that that figure of $1,785 does not fully reflect increases in wages which were given last August and October, so that similar earnings for 1938 would be even larger, as shown by Exhibit 44 covering weekly compensation. (Tr. 683)

Again, in the fourth column of the Retirement Board's study is shown the number of men who received pay in only 11 months of 1937 (65,869 men receiving a total of $81,432,000), and in the fifth column the number who received pay in only 10 months of the year (44,622 men receiving a total of $45,785,000). Adding those figures to the 917,900 men who earned pay during some part of each of the twelve months of the year, it appears that 1,028,391 men earned a total of $1,765,672,000 compensation for the year, or an average of $1,717 for all the men who worked in ten or more months. These 1,028,391 men thus earned 91 per cent of the total compensation paid by the railroads in 1937, performed 91 per cent of the railroad work for that year, and around 91 per cent of any reduction in wages would come from these men having these high earnings.

It will be recalled from Carriers' Exhibit 41, showing the average compensation of all railroad employees, based on the mid-month count, that average earnings for 1937 were $1,781.21. This average of course includes compensation in excess of $300 per month which the Retirement Board study does not include. The Retirement Board study shows that the men who received 91 per cent of the total compensation (excluding all compensation above $300 per month) had actual average annual earnings of $1,717. The men who worked within each of the twelve months, as shown by this study, and also excluding earnings above $300 a month, had average earnings of $1,785 as compared with the middle of the month count average of $1,781. (Tr. 685)

The conclusion is inescapable that the use of the mid-month count of employees to compute average earnings per employee per year or per week is completely confirmed by the Retirement Board study as pro-

ducing fairly the average earnings of a railroad worker who is employed with reasonable regularity, though not necessarily full time. (Tr. 685)

The Retirement Board study, furthermore, cannot be used as a measure of unemployment or partial unemployment in the railroad industry. In the first place the number of men included in the study includes an abnormal number of employees who took advantage of the Retirement Act of 1937 to retire on annuities. During that year the Railroad Retirement Board received more than 49,000 applications for retirement annuities. Both the men who retired and those who filled their places are included in the study. (Tr. 685-686)

When, as we have shown, 91 per cent of the railroad work for the year is done by the men who worked within at least ten months of the year, then low earnings of the men who received only 9 per cent of the total payroll are not due to unemployment on the railroad but are due to the fact that the study includes many casual workers and many duplications in the way of successive employees. (Tr. 687)

If a man retired on the 15th day of January, 1937, his name would be included in the study and the pay he received for that fifteen days work would be included. The man who took his place also has his name included and his compensation for the rest of the year. And yet, the fact that a man retired on the 15th of January is no indication of unemployment or a lack of opportunity for regular employment. The same is true with reference to men who become sick during the year, men who are discharged for cause, men who die, men who voluntarily leave the service, and yet in each instance this man plus the man who takes his place is included in the study. (Tr. 687-688)

A group of casual workers hired to do work in connection with particular flood conditions may work for one or two days. Later in the year the same railroad may hire another group of casual workers in connection with another emergency in another locality. Both groups will appear in this study, yet there is no indication in this of unemployment. (Tr. 688)

Remembering that according to the Retirement Board study 84 per cent of the payroll went to men who worked sometime in each of the twelve months of the year and that they had average earnings of $1,785, that left a balance of only 16 per cent of the work of the industry falling outside this category. In this connection it is important to recall that the normal extent of attrition in the railroad industry, according to the Federal Coordinator's Attrition Report is about 5 per cent, a figure which was used by Mr. George Harrison before the Congressional Committee in presenting the Railroad Retirement Act. This would mean that approximately 5 per cent of the men are separated from the ser-

vice by normal attrition during the year and that approximately 5 per cent or an equal number would be added to take their places. This would seem to take care of a substantial part out of the 16 per cent not in the twelve months category. In addition there are the cases of duplications by reason of sickness and the cases of casual workers. (Tr. 741-742)

From this it is a fair conclusion that the part-time employment due to lack of employment opportunity is a very small item of the total amount of work in the railroad business. (Tr. 743)

It is interesting to point out that counsel for the employees have constantly, when arguing comparisons between 1920 and 1937, argued that about a million men in 1937 performed all the work of the railroads, whereas it took more than two million men to perform all the work of the railroads in the year 1920. Thus, admittedly, the work of the railroads at the present time is done by about a million men. In view of this it is perfectly inconsistent for the employees to assert, as they do in connection with the Retirement Board study, that the railroad men substantially doing the railroad work for the year 1937 were 1,740,799 men instead of about a million men, and that the average earnings for this large group were $1,115.

By and large it is shown by the Retirement Board study that the approximately one million men who have substantially performed all the railroad work for the year 1937 received annual average earnings which correspond most strikingly with the average annual earnings of $1,781.21 disclosed by the Commission's mid-month count.

3. Comparison of the Return to Labor and the Return to Investors.

Carriers' Exhibit No. 49 makes a most interesting comparison of the return to labor and the return to investors over a period of years from 1916 and 1917, omitting the war period, and then from 1921 to 1937, the latter year divided into two six months periods, and the further figure being given for the six months of 1938. The figures in the column headed "Average Earnings Per Hour Worked or Held for Work" are taken from prior exhibits. In the third column of the exhibit, figures are shown on an index basis, with the average for the years 1916 and 1917 taken as the base, or 100. The return earned on investment in the column headed "Cents Per Dollar," is taken from a previous exhibit.

Exhibit No. 49 shows that over a considerable period of years the average worker on the railroads has experienced very substantial increase in his compensation per hour, whereas during the same period the average investor in the railway plant has experienced a very substantial decrease in his return per dollar of investment. The chart on the

right side contrasts the trend of the return on a unit of capital, $1.00, with the trend of earnings per unit of labor, that is per hour worked or held for work. This unit comparison of course takes into account changes in the volume of employment and changes in the amount of investment. (Tr. 691-692)

The index for hourly earnings of employees for the first half of 1937 was 233, while the index of rate of return to the investor was only 52. In the second half of 1937, when wages went up and railway income went down, the respective indexes were 245 for average hourly earnings of the employee, and only 34 for return on the investor's dollar.

In the first half of 1938, the relative earnings of the employee increased to the index figure of 253, while the relative return on the investment dollar declined further to 12. In other words, what went to each employee for each unit of work he contributed, one hour, increased 153.8 per cent between 1916-1917 and 1938, while what was left for the investor for each unit he contributed, that is for each dollar of investment, decreased 87.3 per cent. The labor return went up and the return to capital went down almost to zero.

VII.

THE EARNINGS OF RAILWAY EMPLOYEES AS RELATED TO FLUCTUATIONS IN THE COST OF LIVING—REAL WAGES.

We have just covered the earnings of railway employees in money and their fluctuations over a period of years. However, as we have previously pointed out, and as is fully recognized by economists, it is the purchasing power of the worker's money income, rather than the actual amount of money earned, which determines, more than anything else, the standard of living of himself and his family, the extent to which he can have the comforts and some of the luxuries enjoyed by other classes, and his capacity intelligently and progressively to go about improving his material conditions. And measurement of the trend of purchasing power, or "real wages," involves the double relationship of relative changes in the amount of actual money which the workers have received for their work as compared with changes in the cost of living. The necessity for the use of index numbers in the appraisal of such comparative trends is universally recognized.

We have offered the testimony of Dr. Willford I. King, who is a recognized authority in the field of economics and particularly in the fields of studies of costs of living and indices of costs of living and in the field of studies of national income.

Basically, in his study of costs of living and of trends of costs of living, Dr. King has used the indices prepared by the United States Bureau of Labor Statistics. He described in great detail, which we need not reiterate here, how these indices were prepared. (Tr. 754-758) This cost of living index, computed by the United States Bureau of Labor Statistics, constitutes an extremely careful measurement of changes in the cost of a fixed list of goods representing, for the period 1917 to 1919, the average annual consumption of urban wage workers in the United States. This index and a plotting by chart of the trend of the cost of living from 1913 to 1938 is shown on Carriers' Exhibit No. 50.

To test the Bureau of Labor Statistics' index numbers and the chart of the cost of living trend shown thereby, Dr. King offered Carriers' Exhibit No. 51, comparing that index and chart with the corresponding index of the National Industrial Conference Board and the two most strikingly confirm each other.

By reason of the suggestion that old weights should be changed on account of the fact that in more recent years new wants have produced new purchases by the wage workers, in particular automobiles and their accessories and supplies, Dr. King has made up a new weighting to take in such new factors and has made himself a new set of index numbers based on his new weightings. These are compared, together

with a comparison of their trend chart, with the index numbers of the Bureau of Labor Statistics and their trend chart, and the two again strikingly confirm each other. The explanation is clear, as given by Dr. King, that general changes in price levels which influence the cost of living influence generally all commodities alike so that the substitution of the new weightings in no material way changes the plotting of the trends. (Tr. 770-782)

There are two principal reasons why the three charts or trends of cost of living, that based on the Bureau of Labor Statistics' index, that based on the National Industrial Conference Board's index, and that based on Dr. King's newly weighted index, confirm each other so strikingly. The first reason is that small changes in weightings rarely have much effect on a price index. These changes in weights do not affect the indices much because, as stated, price changes are largely the resultants of the changes in the supply of money and credit. Changes in the supply of money and credit tend to affect all kinds of prices proportionately, and for that reason there is a common movement in all these categories. The other reason is that the samples collected by the National Industrial Conference Board and the United States Bureau of Labor Statistics, were intended to represent exactly the same thing, and two sets of samples carefully collected, intended to represent the same thing, usually give approximately identical results. (Tr. 782-783)

Since these three different sets of index numbers corroborate each other so completely, Dr. King's subsequent exhibits dealing with trends of cost of living are fairly and properly based on the original cost of living indices officially computed by the Bureau of Labor Statistics. As to average hourly earnings of railway employees in money, all of Dr. King's exhibits are based on the prior exhibits introduced by the witness Monroe. What Dr. King has done is to relate these money earnings over a period of years to real wages by relating them to the fluctuations in the cost of living in accordance with the indices of the Bureau of Labor Statistics.

Carriers' Exhibit No. 53 shows average hourly earnings of railway employees represented in this movement, in money, as based on the witness Monroe's exhibits and in real wages as computed from the trend of the cost of living. Whereas average hourly earnings in money have risen from 66.3 cents in 1929 to 75.9 cents for the first six months of 1938, "real earnings" per hour have risen much more strikingly from 66.3 cents for the base year 1929 to 90.7 cents for the first six months of 1938. These real earnings rose from 66.3 cents in 1929 to 69.1 cents in 1930, to 76.9 cents in 1931, to 78.7 cents in 1932, to 82.2 cents in 1933, dropped slightly to 80.4 cents in 1934, rose sharply to

84.8 in 1935, and continued at 84.9 cents in 1936, dropped slightly to 84.5 cents in 1937, and jumped sharply to 90.7 cents in 1938.

Carriers' Exhibit No. 54 shows the same statistics for average weekly earnings. The black bars show graphically the fluctuations in the money weekly earnings and entire bars, including both the black portion and the shaded portion, graphically show the almost steady rise in weekly real earnings. The real earnings rose from $32.07 in 1929 to $32.11 in 1930, to $33.88 in 1931, dropped to $32.74 in 1932, the year of the 10 per cent deduction, rose to $34.25 in 1933, to $34.54 in 1934, to $37.03 in 1935, to $38.59 in 1936, dropped slightly to $38.52 in 1937, and finally rose sharply to $40.30 for the first six months of 1938.

From the standpoint of the relationship of wages to welfare of employees, the weekly earnings are more significant than the hourly earnings, because obviously the workers must live on their weekly earnings. The weekly pay is the best single criterion, when converted to the constant dollar basis, of the current income of the worker who is employed. (Tr. 792)

This exhibit shows that although in 1932, when the 10 per cent deduction from pay was put into effect, the money weekly earnings were substantially lower than in 1929, yet, even in 1932, the real weekly earnings were higher than in 1929, because of the fact that the prices of commodities bought by the laboring class had fallen more than sufficiently to offset the diminution in the average money pay per week. This exhibit further shows that in spite of the ten per cent deduction, in spite of the effects of the general depression since 1929, the real purchasing power of the weekly earnings of the employees throughout the depression has continued upward and that it has now, in 1938, reached a point very much higher than it was in 1929 in the pre-depression period.

Carriers' Exhibit No. 55 deals again with the hourly earnings but in a somewhat different way. Its purpose is to convert the figures for the average hourly earnings presented in Exhibit No. 53 to the terms of an index number based on relationship to 1929. The charts trace the trend of average earnings per hour actual, the much lower trend of the cost of living index, and the resultant much higher trend of real earnings per hour. The real earnings per hour, starting at 100 in 1929, by 1937 had risen to a point 27½ per cent higher, and in the first six months of 1938 they were 36.8 per cent higher than in 1929.

Carriers' Exhibit No. 56 shows exactly the same thing for the average weekly earnings. The resultant trend of the index of real earnings per week of railway employees shows a steady and sharp rise from 1929. With the base of 100 in 1929, real earnings per week rose slightly at first and then faster until in 1937 when they were 20.1 per

cent higher than in 1929. In the first six months of the present year they have reached a level of 25.7 per cent higher than in 1929. (Tr. 799)

A movement of over 25 per cent in real purchasing power of weekly earnings in a period of nine years is a most unusual movement. In most countries of the world a gain of that extent in a century would have been regarded as remarkable. The United States, of course, has had progress at a rate unknown in any other country in the world and, accordingly, we have become accustomed to outstanding advances in wages as compared with other countries. But, even in the United States, an advance of 25.7 per cent in nine years in real wages would be a most unusual phenomenon and quite beyond what one would ordinarily expect. (Tr. 800)

But there are certain striking peculiarities about this particular showing. This advance of 25.7 per cent in real wages within nine years has taken place at a time in our history when other things have not been pursuing a normal upward course. In 1929 all things in general turned down. But in the face of that general depression we find these real earnings per week of railway employees showing this extraordinary rise contrary to all other trends.

As indicating these other general trends, Carriers' Exhibit No. 57, witness King, reproduces the survey of current business of the United States Department of Commerce showing the trends of industrial production, monthly income payments (national income), factory employment and payrolls, retail sales, construction contracts awarded, and wholesale prices.

All of the six charts show a very marked decline in the course of business from 1929 to 1932 and 1933. Industrial production went down from a level of 125 to about 60, or about half. Monthly income payments, representing the income of all people of the United States, went down from 100 to about 55. Factory employment went down from around 107 to about 61; retail sales from 110 to below 60; construction contracts from 122 to about 15; and wholesale prices fell from about 95 to about 60.

All these marked declines took place between 1929 and 1933, and yet reference to Carriers' Exhibit No. 56 will show that the real earnings per week for railway labor as represented in this controversy moved up nearly 7 per cent higher in 1933 than in 1929. (Tr. 804)

From 1933 on there was a gradual recovery in all of these business indicators, but the important thing to notice is that in no case was the peak in 1936 or 1937 as high as the 1929 peak. We had partial recovery but not complete recovery. The United States is a growing nation, the population steadily increasing, and heretofore we have had everything always making a new peak with each cycle, but this did not hap-

pen in the present cycle. In 1937 most of the business indicators shown on Exhibit 57 attained only 50 to 90 per cent of the 1929 level, but again, as shown by Exhibit 56, in 1937 the real earnings per week of railway labor were 20 per cent higher than they were in 1929, although business in general had not succeeded in reaching 1929 levels. (Tr. 805)

Again, it is striking that most of these business indicators declined sharply from 1937 to 1938. Industrial production fell off from about 115 to about 78. Monthly income payments went off about 10 per cent. Factory employment declined about 25 per cent. Retail sales fell 15 per cent. Wholesale business declined a little more than 10 per cent. Construction contracts fell off slightly and wholesale prices considerably. Yet, while all these standard business indicators were falling off from 1937 to 1938, Exhibit 56 shows that real earnings per week of these railway employees rose on the average a little more than 5 per cent. So that, at the close of the nine year period all the business indicators are well below 1929 levels, yet real earnings per week of employed railroad workers average nearly 26 per cent higher than in 1929 (Tr. 805-806)

So far the trends of real earnings of railway employees both on an hourly and a weekly basis have been shown since 1929 and have shown fairly steady increases contrary to other business indicators. However, it is important to note that that increase in real earnings did not merely begin in 1929 but that it had continued for a long period of time prior to that.

Carriers' Exhibit No. 58, witness King, shows the trend in real earnings per hour of railway employees for the entire period from 1916 to the first six months of 1938. The graph line representing real earnings per hour of railway employees moves almost steadily up from 100 in 1916 to an index of 209.4 in 1938, and it moves in a much more nearly straight line in its upward movement than the line representing the actual earnings per hour. This is accounted for by the fact that the changes in actual money earnings per hour have tended to reflect the changes in the cost of living. (Tr. 808)

Carriers' Exhibit No. 59, witness King, is prepared in exactly the same way and shows the same long trend as to index of real earnings *per week* of these railway employees which, as previously stated, are the most significant measure with respect to the economic welfare of the employees. This exhibit shows that the real earnings per week of these employees went up 54 per cent from 1916 to 1938. (Tr. 809-810)

From these exhibits it is clear that the trend of real wages of railway employees over a long period of years has been almost consistently upward and much more sharply upward than has been the trend of actual money earnings.

VIII.

COMPARISONS OF EARNINGS OF RAILWAY EMPLOYEES WITH EARNINGS OF OTHER GENERAL CLASSES OF WAGE WORKERS.

Carriers' Exhibit No. 60, witness King, shows per capita annual earnings of railway employees in money from 1929 to 1938 compared with the annual earnings in money of all employees in the United States, based on United States Department of Commerce figures, the annual earnings of railway employees being based on Interstate Commerce Commission figures. This exhibit does not reflect real wages or purchasing power but makes a comparison merely in terms of money. The Department of Commerce figures, compiled in its study of national income, show these annual earnings of all employees in the United States, described as equivalents of full time earnings. (Tr. 812)

The significant showing of Exhibit 60, is the comparison of trends between annual earnings of railroad employees involved in this movement and annual earnings of all employees in the United States. In the first place, the railway employees on the average were paid more from 1929 to date than were all employees in the United States on the average. All employees in the United States in 1929, on full-time equivalent basis, averaged $1,451 per year, whereas railway employees earned an average of $1,672 on the basis of the middle of the month count. And in the first six months of 1938 all employees in the United States had average earnings at the rate of $1,252 per year, whereas these railway employees averaged at the rate of $1,760 per year, so that, all along, railway employees averaged more earnings per annum than did all employees in the United States.

In this connection, it is to be remembered that the Department of Commerce figures for annual earnings of all employees also include the annual earnings of railway employees. If railway employees were not so included, the spread between the two lines, annual earnings of railway employees and annual earnings of all employees in the United States, would be greater than is shown on the exhibit. In other words, the inclusion of railway employees in the Department of Commerce figures for all employees necessarily tends to pull up the average of the all employee figures.

The chart at the right hand corner of Exhibit No. 60 shows graphically the widening spread in favor of railway employees since 1929. But perhaps the most significant showing of the whole exhibit is that although annual earnings of railway employees in money have continued upward from 1937 to 1938, the annual earnings in money of all employees in the United States have sharply dropped from 1937 to

1938. It results that on this broadest comparison railway employees are a highly fortunate class in respect of annual earnings in actual money.

Carriers' Exhibit No. 61, witness King, both by table and by graph, compares the per capita earnings of all employees in the United States by industrial groups with the annual earnings of railway employees. The essential showing of this exhibit is that since 1933 every industry shows lower pay than the pay of railway employees except finance, which covers bankers, insurance companies, brokerage houses, and institutions of that type. (Tr. 816-817)

So, again, on this particular comparison with all employees by industrial groups, railway employees are a highly fortunate class with reference to annual earnings and have become an increasingly fortunate class between 1929 and 1938.

Carriers' Exhibit No. 62, witness King, shows similar comparisons based upon United States Bureau of Labor Statistics' figures on the hourly earnings and the average weekly earnings of wage workers, not only in manufacturing but in a number of other industries, as compared with average hourly earnings and average weekly earnings of all railway wage workers, the latter figures being taken from the National Industrial Conference Board's selection of railway wage workers out of the Interstate Commerce Commission's statistics. (Tr. 820-821) It was necessary to go to the Conference Board figures on railways because they are the only figures distinguishing railway wage workers from all railway employees and hence it was necessary to use these figures so as to compare railway wage workers with wage workers in other industries as shown by the Bureau of Labor Statistics' figures. (Tr. 822)

It will be noted from Exhibit No. 62 that the average hourly earnings for all railway wage workers for the six months ended June 30, 1938, were nearly 75 cents and those for manufacturing wage workers were about 65 cents. It will be noted, coming down the line of the Column headed "Average Hourly Earnings (Cents per Hour)," that in some industries in manufacturing the hourly rates are materially higher than the hourly rates for railway wage workers, for instance transportation equipment and paper and printing industry. It is a bit higher in the chemicals and allied products, in petroleum refining, and is noticeably higher in the case of rubber products. Coming to the non-manufacturing industries, the average hourly earnings are materially higher in the anthracite coal mining industry, in the bituminous coal mining industry, and in the building construction industry than in the case of railway wage workers.

But in the right hand chart on Exhibit No. 62, it is shown that the average weekly earnings for these same groups of employees in differ-

ent branches of manufacturing and non-manufacturing industries are substantially lower in every case than the average weekly earnings of railway wage workers. Forty-four and a half hours a week is the average amount worked by railway wage workers, whereas in these other industries the weekly pay is low because hours have been cut down so that people do not have an opportunity to work a reasonable length of time. While they get higher pay per hour in some of the outside industries, they get substantially lower pay per week. And this year, from the standpoint of the weekly pay envelope, the pay of railway wage workers in money is materially higher than it is in any of these outside industries covered by the Bureau of Labor Statistics.

Carriers' Exhibit No. 63 shows figures obtained in exactly the same way as those on Exhibit No. 62, except they cover the earnings per week in June, 1938, the last month available, and here again it is shown that in June, 1938, as in the first six months of 1938, the average money earnings per week for all railway wage workers are materially higher than the average earnings per week in any of the other industries covered by the United States Bureau of Labor Statistics. The earnings per week for railway wage workers were $33.35, whereas they were only $22.30 for all manufacturing wage workers, that is, they were about half as high again for railway workers as for all manufacturing wage workers. Even in the highest paid manufacturing industries, the wages per week were materially lower than they were in the case of railway wage workers, and the same thing is true as to non-manufacturing industries.

Carriers' Exhibit No. 64, witness King, uses the same figures to show a course or trend since 1929 of all manufacturing wage workers as compared with all railway wage workers. It is confined to manufacturing wage workers, because the United States Bureau of Labor Statistics has not calculated data for the wage workers in the non-manufacturing industries except for recent years and such figures do not go back to 1929 except for all manufacturing wage workers.

From this Exhibit No. 64 it will be seen that there is nothing new about the present situation of railway wage workers receiving more pay per week than do all manufacturing wage workers. They have continuously received substantially more since 1929. The general movements of the trends for all railway wage workers and for all manufacturing wage workers have been generally similar except that railway wage workers have increased relatively more rapidly. Moreover, there has been a wide spread between the two trend lines in favor of railway wage workers. But a most important showing of this exhibit is that from 1937 to 1938, while the pay of railway wage workers has continued

to rise, the pay of all manufacturing wage workers on the average has fallen sharply.

Carriers' Exhibit No. 65, witness King, shows a similar condition as to average weekly earnings based on National Industrial Conference Board figures. The Conference Board does something which the Bureau of Labor Statistics does not do, that is, they separate the pay of male workers from the pay of female workers. Accordingly, Exhibit No. 65 shows the trends of average weekly earnings from 1916 to 1938 for all railway wage workers and then shows the trend for male wage workers in factories and for all wage workers in factories from 1920 (the first year for which the Conference Board has its figures) to 1938. On this exhibit again the figures for railway wage workers are based on Interstate Commerce Commission figures as recast by the Conference Board to reflect only wage workers. These Conference Board figures are generally recognized among statisticians and economists as being reliable. They are also relied upon by the Department of Commerce. (Tr. 835). In fact, Conference Board figures are strongly relied upon by the employees in this proceeding.

This Exhibit No. 65 shows that from 1920 to 1921 the male wage workers in factories had a much sharper drop in weekly earnings than did the railway wage workers; that after 1921 their earnings went up faster than did the railway wage workers; but that by 1929 they were still receiving materially less than the railway wage workers. Then there was a sharp decline in the case of male wage workers in factories, much sharper than in the case of railway wage workers, so that by 1932 the earnings of wage workers in factories was far below the level of earnings of railway wage workers. The factory workers between 1932 and 1937 advanced somewhat more rapidly than the railway wage workers, though still remaining considerably below them, and, in the case of male wage workers in factories, their earnings were much further below the railway wage workers' earnings in 1937 than in 1930. (Tr. 837)

But here again the striking showing of the exhibit is that, whereas the average weekly earnings of railway wage workers continued steadily upward from 1937 to 1938, the average weekly earnings of both male and female workers in factories dropped precipitously. The result is that in 1938 the earnings of railway wage workers, including both men and women, is far higher than the earnings even of male wage workers in factories.

Carriers' Exhibit No. 66, witness King, is based on Conference Board manufacturing figures broken down into twenty-five different industries, though some of these are combined on the exhibit. In 1914 railway wage workers were earning $15.17 a week and at that time,

looking entirely across the line of all industries, the only industries in which wage workers earned more pay than railway wage workers were paints and varnishes, $15.59, and the printing trades, $20.32 and $19.09, but in all industries on the average wage workers were earning only $13.65.

But coming down to June, 1938, railway wage workers were earning $33.35 a week on the average and, running across the entire list of the other industries, it will be found that the only ones in which wage earners were earning as much as the railway wage workers were the printing industries, book and job printing receiving $34.34 and printing, news and magazine, $35.43. In all the other industries the average weekly earnings were lower than for railway wage workers, the average of all being only $24.98, as compared to $33.35 for railway wage workers. In nearly every case there is a decline in earnings in the first six months of 1938, except in the case of the railroad industry, and in that industry the earnings moved in the opposite direction, rising from $32.23 in 1937 to $33.17 for the first six months of 1938 and to $33.35 for June, 1938, while the earnings were declining in all of the other industries except meat packing.

Carriers' Exhibit No. 67 makes the same showing but adds women wage workers in the other industries, making the earnings slightly lower generally. Women workers in the railroad industry are included in both Exhibits 66 and 67.

Comparability of Middle of the Month Count Figures for Railway Employees with Conference Board and Bureau of Labor Statistics Figures for Wage Workers in Other Industries.

In cross-examination of Dr. King and in connection with questions put to him by the Board, some doubt was raised as to the comparability of the middle of the month earnings figures for railway employees with the Conference Board figures and Bureau of Labor Statistics figures as to other industries.

It is to be borne in mind that the railroad figures, based on the middle of the month count are to be distinguished from the full opportunity count formerly kept by the Commission before 1933, and from the count of all names on the payroll now kept by the Commission. Calculating the weekly compensation of railway employees on the basis of the so-called full opportunity count shows approximately 7 per cent higher than when they are calculated on the middle of the month count. Even the full opportunity count is not a full time count. Figuring the compensation of railway employees on the middle of the month count not only is not calculating the compensation of a man who worked full time, but is not even calculating the compensation of

a man who worked in a full opportunity position. The middle of the month count shows the people working as they actually do work on the railroads, that is, it is intended to give a typical picture of the way people actually do work, many of them working full-time, some of them working full opportunity, and some of them working part time. (Tr. 981-982)

The distortion which would be produced by using the Commission's count, including all employees on the payroll during the month, would be a much more decided distortion than one which would result from using the count of all employees on the payroll in a week. (Tr. 982-983)

Of course, a tremendous distortion results from using all names appearing on the payroll throughout an entire year, as is shown by the Railroad Retirement Board's study which shows 1,740,799 names on the payroll, or some 20,000 less than that total on the break-down revised study, within an entire year, whereas, admittedly 1,114,663 men constituted the average number of men working on the railroads and doing the work of the railroads in 1937, the year covered by the study.

The Conference Board figures for other industries used in Carriers' Exhibit No. 66 and other exhibits presented in connection with Dr. King's testimony, substantially show the number of men on the payroll in the week. Some of the industries may report them on the basis of two weeks, but it seems clear that substantially they are reported on a weekly basis because, by and large, these other industries pay off once a week. (Tr. 947)

It will be recalled that the middle of the month count of the Interstate Commerce Commission does not undertake to and does not count merely the exact number of people employed on the railroads on the middle of the month, but includes large numbers of persons who are not actually employed on the middle of the month. (Tr. 1581-1582)

When he was recalled, Carriers' witness J. Elmer Monroe further clarified and explained the meaning and effect of the middle of the month count by more particular references to the Commission's rules governing that count introduced in evidence as Carriers' Exhibit No. 40. With reference to a case postulated in connection with the examination of the witness King, in which 1,000 men would be working in a factory, but on a part-time basis, 500 men working during the first three days of the week and a different 500 during the last three days of the week, Mr. Monroe showed that if a count of such employees were made in accordance with the rules governing the Interstate Commerce Commission's middle of the month count, such count would show 1,000 men for the week rather than 500 men. Thus the middle of the month count would show the same thing as the weekly payroll count

actually used in the industry. This results from a rule of the Commission governing regular part-time employment, Carriers' Exhibit No. 40, Section N, as follows:

> "For occupations in which there is a regular part-time schedule, such as working every other day, working 4 hours each day, or less than 6 days each week, make the count so as to be equivalent to dividing the straight time hours of the week or payroll period ending nearest the 15th by respondent's prevailing reduced straight time assigned hours for the week or period. For example, if on a certain division 1,600 hours of section men's labor is paid for in a week and the prevailing rule is to give each man three days work a week, eight hours a day, divide 1600 by 24, and enter 67." (Tr. 1580-1581)

On the basis of this rule, the witness Monroe testified that in this example of 1,000 men working on a part-time schedule, 500 men working for the first three days of the week and 500 men working for the second three days of the week, at 8 hours a day, the amount of time paid for during the week would aggregate 24,000 hours, the reduced straight time combined hours would be 24 hours per week, 8 hours per day for 3 days. Therefore, dividing the 24 hours into the total hours paid for of 24,000, the result would be 1,000 men in accordance with the Commission's middle of the month rule. In other words, the middle of the month count rule includes large numbers who are not employed on the middle of the month. (Tr. 1581-1582)

Supposing, again, that an industry had worked 500 men under a part-time schedule for the first 3 days in the week and no men in the last 3 days of the week, but that a middle of the month count was made on Friday, the witness Monroe showed that such count would show 500 men, under the Commission's Restricted Work Rule, and that such a count would not show zero men working because none happened to be working on Friday the 15th. (Tr. 1582)

The rules were further clarified as to train and engine service men. An engineer running on a regular run from Washington to New York works on Monday and under his regular program of work does not work again until Thursday, and, assuming the middle of the month count falls on Tuesday or Wednesday, it is shown that that man would be counted on the middle of the month since he had a regular assignment and all men having regular assignments are counted on the middle of the month count, whether they are working on the particular day or not, as provided by the rule shown in Section C, page 11, of Carriers' Exhibit No. 40. (Tr. 1583)

It was further shown that the rules for the middle of the month count also include all men on the extra board, Section C, page 11, Car-

riers' Exhibit No. 40, and that they also include men who are subject to call for duty, including men on vacation or sick leave and under pay. (Tr. 1583)

We submit that this further analysis of the rules of the Commission governing the middle of the month count establishes the validity of the conclusions of the witness King, made in connection with his comparisons with outside industries, that the weekly earnings for those industries are substantially comparable with the weekly earnings for railway employees and for railway wage workers calculated according to the middle of the month count as shown on the exhibits, and in accordance with the rules of the Interstate Commerce Commission.

IX.

BY ALL BROAD TESTS EARNINGS OF RAILWAY WORKERS HAVE GONE UP DISPROPORTIONATELY AND ARE OUT OF LINE WITH THE EARNINGS OF OTHER MAJOR CLASSES OF CITIZENS OF THE UNITED STATES.

1. Income of Farmers.

The employees seem to complain bitterly of any comparison between their condition and the condition of farmers or of farm labor. These comparisons are not made for the purpose of asserting that railway employees should be reduced to the earning levels of farmers, though we see no reason why railway employees should be shocked at a comparison of their condition with the condition of the farming population of the United States, especially since the farm population, as a broad industry, pays a huge amount of the freight charge bill of the country, and, *pro tanto* bears the brunt of the railway wage bill included in those charges. However, regardless of the actually much lower income of farmers and of farm labor, the comparison thereof with average annual pay of railway workers is very important from a trend standpoint, as shown by Exhibit 68 from 1924 to 1938. The manner in which the Department of Agriculture arrives at these figures for farm income and for average annual pay of farm labor was fully described by Dr. King. (Tr. 845) The average annual pay of railway employees since 1924 has tended to fluctuate around the $1,600 line. The average income of farmers in the United States from 1924 to 1929 fluctuated around $1,100 and then went far down to $300 in 1932, finally recovered in 1937 to a level of about $900, and then dropped off sharply, according to the Department's estimates, to about $800 in 1938, whereas railway employees were still going up to a level close to $1,800.

It will be remembered that this is not a showing as to the income of farm labor but is a showing as to the income of farmers and farms. The average showing as to average annual pay of farm labor (where no board is furnished) is much worse.

2. Earnings of Chief Breadwinner Related to Family Income.

Carriers' Exhibit No. 69 is designed to illustrate the subject of total family income compared with the earnings of the chief breadwinner, and it shows that ordinarily the earnings of the chief breadwinner in the family are not the entire income or earnings of the family. This exhibit is based upon a study by the United States Bureau of Labor Statistics which developed figures to show not only the earnings of the

chief breadwinner, but also the entire earnings of the family, so that it is possible to use these figures to compare the income of the family with the income of the chief breadwinner from his earnings.

The ratios are presented in the next to the last column on the table according to cities and towns studied by the Bureau. In New York, for example, the ratio of the income of the family to the earnings of the chief breadwinner was 1.28, or 28 per cent higher than the earnings of the chief breadwinner. In Philadelphia the earnings of the family were 32 per cent higher, and so on down the list with variations. Taking a weighted average of all these ratios, weighted in accordance with the importance of the different cities studied, the average income of the family is about 22 per cent larger than the earnings of the chief breadwinner. It results that the probabilities are that the income of the average working class family is 22 per cent higher than the income obtained from the earnings of the chief breadwinner. (Tr. 853)

The largest part of the additional money comes from the earnings of the additional members of the family who work, but a part also comes from investments of one kind or another, rentals, dividends and interest, etc. It would seem to be a perfectly fair conclusion, since the Bureau of Labor Statistics has tried to get representative families of the wage working classes, that the average family of a railway employee would not be dependent wholly upon the earnings of the chief breadwinner in that family but that additional income from other sources would amount to somewhere around 20 per cent. (Tr. 854)

3. Report of the National Resources Committee.

There has just recently been published by the National Resources Committee a most elaborate study dealing with consumer incomes in the United States from 1935 to 1936. This study we have offered in evidence as Exhibit No. 71. The results of the study are based primarily on a nationwide canvass of over 300,000 families. The way in which the materials were collected and treated is described elaborately in the report. This report is the first careful study on the distribution of income in the United States that has been made since 1921, and on the face of it, seems to be a very painstaking piece of work in which the National Resources Committee has utilized as much material as they could compile. (Tr. 856-858)

This study demonstrates that the income condition of railway employees on the average is far above the average condition of citizens of the United States in general, and indeed that railway employees fall at least within the top three-tenths of the citizenship of the United States as to amount of annual earnings.

We have offered as Carriers' Exhibit No. 70, witness King, a table and chart based on this study of the National Resources Committee. This exhibit is based on a table appearing on page 6 of that report. It shows the distribution of all of the families studied, that is, the families of two or more persons, and the single families combined, and shows the percentage distribution of these families according to income levels. In making up the graph, due to the fact that the table contained in the report has some income intervals of only $250 and some of $500, it is necessary to halve the bar as to the number of people and double the width of it where the income interval is $500 instead of $250, so that the relative number of people in each of the classes may be shown by the height of the black bars. Where the income interval is $1,000, it is necessary to quarter the bar and multiply its width by four. (Tr. 860)

Statisticians call the class that contains the largest number of persons the mode. The mode is the point of greatest frequency, the most common occurrence, the typical thing. The highest column in all of these families is that for the class having income from $750 to $1,000, so that, according to this elaborate and careful survey of the National Resources Committee, the modal of all the families in the United States is $750 to $1,000. However, the bar representing the income interval of $500 to $750 is almost exactly as high. The result is clear that a large proportion of the families in the United States are concentrated in classes having total income less than $1,000, this including single families and the families of two or more persons. (Tr. 860-861)

Carriers' Exhibit No. 72 is also based on the report of the National Resources Committee but, instead of showing merely the number of persons in each particular income class, the exhibit shows the percentage of persons in each particular income class and cumulates these percentages, adding them together, beginning with zero income and working up, so that when all the families included in the National Resources Committee's study are in, the cumulated percentage is 100. (Tr. 862)

This illustrative exhibit shows that, according to the report of the National Resources Committee, 5 per cent of the families in the country had $250 or less as income; 17 per cent had $500 or less; 31 per cent had $750 or less; 47 per cent had $1,000 or less; 59 per cent had $1,250 or less; 69 per cent had $1,500 or less. In other words, the study shows that more than two-thirds of the families in the United States had annual income of $1,500 or less, and those incomes include not only the income from the earnings of the chief breadwinner, but the income from all other members of the family and sources. It will further be noted from Exhibit No. 72 that 76 per cent of the families and

single individuals in the United States had less income than the average annual earnings of railway employees as shown by the Interstate Commerce Commission statistics of $1,781.21. (Tr. 863)

This, of course, does not consider the question of unemployment. But the National Resources Committee report, on page 97, shows a comparison of the non-relief families in the United States, their frequency distribution, and that shows that the non-relief families do not differ very materially as to distribution from those who are on relief. (Tr. 864)

Table 10-B, on page 97 of the Committee's report, tends to show that in the wage earning group the class having income between $1,000 and $1,250 was the modal or maximum number. These are non-relief families, so it results that the two largest classes covered by the study are those having incomes from $750 to $1,000 and from $1,000 to $1,250. The modal class, therefore, for the entire study seems to run from $750 to $1,250. (Tr. 865)

This study further confirms our previous showing that the income of farmers is very low comparatively. It shows the modal income of farmers as betwen $500 and $750, with a somewhat smaller group having from $750 to $1,000. (Tr. 865-866)

As to the independent business group, people who might be expected to be relatively quite prosperous, the Committee's report shows that the modal or largest number fall in the class having income from $1,000 to $1,250. (Tr. 866)

There is also significance in table 11-B on page 97 of the Committee's report, where families are classified according to the cities in which they live. In the metropolitan areas where the wages are highest, the modal income class falls in the $1,250 to $1,500 group. In the cities of 100,000 to a million and a half, the modal is $1,000 to $1,250. In the middle sized cities, it drops to a range of from $750 to $1,000, and in the small cities is from $1,000 to $1,250. (Tr. 867)

Reverting, in this connection, to Carriers' Exhibit No. 48, witness Monroe, the Railroad Retirement Board study, approximately 84 per cent of the railroads' payroll is paid to the people employed on the railroads who work to some extent in each of the twelve months of the year, and on the face of the Retirement Board study it is shown that the modal pay for those who work in each of the twelve months of the year, that is, the highest frequency, is in the class having incomes between $1,800 and $1,900. Thus the modal income of these railway employees for the year 1937 was practically double the modal income of the families in the United States, the latter income including not only the earnings of the chief breadwinner but other earnings which apparently would run about 20 per cent in addition to the earnings of the chief breadwinner. (Tr. 868)

4. Bureau of Internal Revenue Statistics.

Carriers' Exhibit No. 73 is prepared from Statistics of Income, a publication prepared annually by the United States Bureau of Internal Revenue and based upon income tax returns for the years 1922 to 1934, inclusive. No corresponding figures are available for later years. (Tr. 870)

These figures are not complete for all the years because of the fact that in some of the years the income tax exemptions ran above the limits at the head of the columns, but the exhibit carries the figures for all the years where available and these figures corroborate the evidence indicated by the report of the National Resources Committee that people with large incomes constitute a very small fraction of the population. (Tr. 871)

For example, in a prosperous year like 1923, only 12 per cent of all married men reported incomes as high as $2,500. In 1934 the percentage was down to 5 per cent. In the best year covered by the figures, 1924, only about 6 per cent of married men in the United States had incomes of $3,500 or over, according to their income tax returns, whereas in the worst year, 1933, less than 2 per cent had incomes above that figure, and in 1934 only a little more than 2 per cent. (Tr. 872)

In 1924, the best year available, only 26 per cent of single men reported incomes of $1,000 or more, and in the worst year, 1932, only 10 per cent. (Tr. 872)

In 1924, the best year, less than 20 per cent of single men reported incomes of $1,500 or more, and in the worst year, 1933, less than 6 per cent reported such incomes. When we get to the figure of $2,000, we find that in the best year, 1924, 9.73 per cent reported incomes of $2,000 or over, and in the worst year, 1932, only 2½ per cent reported such income. All of this goes to show that the incomes of the people of the United States are mostly in the lower ranges, and these people, by and large, are the ones who must pay the rates for railway transportation.

5. Relation of Gross Revenue to Total Payroll.

Carriers' Exhibit 74, witness King, is a statement showing the relationship between the payroll and the gross revenue for the railroad industry and for other industries, the figures for railroads being taken from reports of the Interstate Commerce Commission and figures for other industries being taken from reports of the Bureau of Census, all being for 1935, the last year for which the census offers data. (Tr. 873-784)

It is entirely obvious from this exhibit that the percentage of payroll to gross revenues is very much larger in the railway industry than in any other industry covered.

6. Department of Commerce National Income Figures.

Carriers' Exhibit 75, witness King, is based upon the national income figures as published by the United States Department of Commerce. It presents a table showing the national income paid out, in the first column, as estimated by the Department of Commerce, for each year from 1929 to date. These income figures are in terms of money and are not reduced to terms of purchasing power. The table also shows estimates of the population of the United States in the middle of each year. By dividing the national income figures by the population figures, the exhibit mathematically arrives at the per capita national income. The exhibit then compares this per capita national income with the average pay of railway employees for each year, excluding the classes not involved in this controversy.

It is to be borne in mind that the purpose of this chart is not to make a comparison of the absolutes, the per capita national income with the average annual pay of railway employees, but is to compare the trend and movements in the per capita national income with the trend and movements in the annual pay of railway employes since 1929. (Tr. 877)

These are shown, only from the relative standpoint. They are given in terms of money income. They show that in terms of money income the annual earnings of railway employees fell from 100 in 1929 to the low point index of 81 in 1933 and have since risen to the index point of 105.3 in 1938. In other words, in terms of money, annual earnings of railway employees is now higher than it was in 1929. (Tr. 882)

On the other hand, per capita income (and national income is put on a per capita basis because this takes the factor of the growth of population out in order to give a fair trend) fell from 100 in 1929 to a low point of approximately 56 in 1933, as compared to 81 for the railroad employees, and has since risen to a high point of 83 in 1937 as compared with 102 for railway employees, and the per capita national income has again fallen off according to preliminary estimates to 76 in 1938. We see, therefore, that from the trend standpoint, during the period from 1929 to 1938, the money pay of railway employees has gained approximately 5 per cent, while the per capita national income has fallen approximately 24 per cent.

7. Summarizing Comparison Exhibits.

Carriers' Exhibits 76 and 77, witness King, are key exhibits drawing together in one place and summarizing many of the various comparisons made by Dr. King on his previous exhibits.

Exhibit 76 illustrates the changes that have taken place between the first six months of 1929 and the first six months of 1938, using

1929 as a base. Whenever the change has been up it is indicated in a black figure and a black bar. Whenever a change has been down it is indicated by a red figure and a red bar.

First, the cost of living index is compared between the two years, 100 in 1929, 83.7 in 1938, a decrease of 16.3 per cent.

In the second place, railway employee earnings (excluding officers and employees not in the wage movement) are compared, first, on the actual money basis and, second, on the basis of real wages in terms of 1929 dollars. Average weekly earnings (actual) were $32.16 in 1929 and $33.73 in 1938, or an increase of 4.9 per cent. Average weekly earnings (real wages) were $32.16 in 1929 and $40.30 in 1938, or an increase of 25.3 per cent.

In the third place, salaries of railway wage workers are compared: average weekly earnings (actual) $31.80 in 1929, $33.17 in 1938, an increase of 4.3 per cent; average weekly earnings (real wages) $31.80 in 1929, $39.63 in 1938, an increase of 24.6 per cent.

In the fourth place, average weekly earnings, of *male* workers in 25 manufacturing industries are compared: average weekly earnings (actual) $30.86 in 1929, $24.59 in 1938, or a decrease of 20.3 per cent; average weekly earnings (real wages) $30.86 in 1929, $29.38 in 1938, a decrease of 4.8 per cent.

In the fifth place, average weekly earnings of *all* wage workers in 25 manufacturing industries are compared: (actual) $28.78 in 1929, $23.47 in 1930, or a decrease of 18.5 per cent; (real wages) $28.78 in 1929, $28.04 in 1938, or a decrease of 2.6 per cent.

In the sixth place, average weekly earnings of wage workers in all manufacturing industries are compared: (actual) $27.73 in 1929, $22.24 in 1938, or a decrease of 19.8 per cent; (real wages) $27.73 in 1929, $26.57 in 1938, or a decrease of 4.2 per cent.

In the seventh place, average weekly earnings of farm labor without board, month of April, are compared: (actual) $11.43 in 1929, $8.12 in 1938, or a decrease of 29 per cent; (real) $11.43 in 1929, $9.70 in 1938, or a decrease of 15.1 per cent.

In the eighth place, average per week income per farm is compared: (actual) $21.61 in 1929, $15.50 in 1938, or a decrease of 28.3 per cent; (real) $21.61 in 1929, $18.52 in 1938, or a decrease of 14.3 per cent.

In the ninth place, full time equivalent average weekly earnings of all employees in the United States are compared: (actual) $27.83 in 1929, $24.01 in 1938, or a decrease of 13.7 per cent; (real) $27.83 in 1929, $28.69 in 1938, or an increase of 3.1 per cent, this being the only comparison on the chart, aside from railway employees, which shows an increase rather than a decrease.

In the tenth place, per capita national income per week is compared: (actual) $12.39 in 1929, $9.42 in 1938, or a decrease of 24 per cent; (real) $12.39 in 1929, $11.25 in 1938, or a decrease of 9.2 per cent.

In the eleventh place, revenue freight carloadings for 25 weeks is compared: 24,520,384 for 1929, 13,641,438 in 1938, or a decrease of 44.4 per cent.

In the twelfth place, total operating revenues of the railways: $3,030,502,045 in 1929, $1,636,408,494 in 1938, or a decrease of 46 per cent.

In the thirteenth place, net railway operating income: $551,855,821 for 1929, $70,289,305 for 1938, or a decrease of 87.3 per cent.

In the fourteenth place, rate of return earned on property investment, annual basis: 5.24 per cent in 1929, 0.67 per cent in 1938, or a decrease of 87.2 per cent.

In the fifteenth place, net income after fixed charges: $374,410,000 in 1929, and a deficit or red figure of $181,253,596 in 1938.

Exhibit No. 77 is made up on exactly the same basis, but to compare the years 1937 and 1938, first six months of each. This again shows both actual and real earnings of railway employees and of railway wage workers substantially higher in 1938 than in 1937. For every other comparison on the chart, with the exception of farm labor, 1938 is substantially below 1937. Weekly wage earnings in manufacturing industries have declined nearly 16 per cent. Average weekly full time earnings of all full time workers in industry has fallen nearly 5 per cent. National per capita income has declined 8 per cent. Average income per farm has diminished 12 per cent. Revenue freight carloadings have fallen 25 per cent. Total railway operating revenues have fallen almost 22 per cent. Net railway operating income has fallen 76 per cent. The rate of return earned on property investment in the railroads has shrunk 76 per cent. The 1937 figure of $38,896,141 for net income after fixed charges has turned into a deficit for 1938 of $181,253,596.

These figures all serve to show how different conditions are today from the conditions prevailing in 1937, just before the last increase in railway wages was made. This increase in wage rates has resulted in a definite advance in the pay of railway employees, while at the same time a marked decline has occurred in practically all other general phases of economic activity accompanied by a shrinkage in railway income so large as to forecast bankruptcy of the industry, unless the situation is remedied. (Tr. 888-889)

X.

THE TESTIMONY OF THE RAILROAD EXECUTIVES AND OF THE CHAIRMAN OF THE CARRIERS' JOINT CONFERENCE COMMITTEE.

We have brought before the Board in this case the testimony of representative and outstanding railroad presidents from the three sections of the United States, of Mr. M. W. Clement, President of the Pennsylvania, and of Mr. F. E. Williamson, President of the New York Central, from the east; of Mr. Henry A. Scandrett, Trustee and executive head of the Milwaukee, of Mr. Hale Holden, Chairman of the Southern Pacific Company and of its wholly owned affiliated companies, and of Mr. Charles Donnelly, President of the Northern Pacific, from the west; and of Mr. Ernest E. Norris, President of the Southern, from the south. Time limitations would not admit of doing more than this. We have also given the Board the testimony of Mr. Herbert A. Enochs, Chairman of the Carriers' Joint Conference Committee.

1. Testimony of Mr. M. W. Clement.

Mr. Clement approached this wage controversy from the broad institutional viewpoint as a problem of the entire railroad industry and of the mass of its employees. He outlined the three outstanding responsibilities of a railroad executive: to the public; to the employees; and to the men and women whose investments make the jobs and the service possible, and showed that necessarily these three obligations are inseparably tied together. (Tr. 1068-1069)

Asserting a belief in high wages, as high as the industry can afford, in relation to its best interests and to the best interests of the country as a whole, he pointed out the effect of competition of other forms of transportation. He asserted that the best way to protect railroad men is to protect the industry itself and to protect employment for them in this industry so that they will not have to seek employment in other industries at lower wages. (Tr. 1069-1070)

Mr. Clement testified that taking it all in all, job for job, wherever railroad labor works, it works under the best conditions and pay throughout the country, and that all kinds of railroad jobs are greatly sought after. He admitted that it is perfectly possible to pick out a few high spots in other selected industries where wage rates may be higher than in certain positions in railroad shop work, particularly in high wage rate areas. But he asserted that if you can strike an average all over the country you will find the average of railroad shop wages standing out. (Tr. 1073-1074)

As to engine and train service men, the highest paid of all American labor, he asserted that these men could nowhere find the wages,

working conditions and continuity of employment that they enjoy; and with a social security unequaled throughout the world. (Tr. 1074)

He showed that the railroad industry is proud of the standard of wages and working conditions its employees have achieved, but he said: "There is no class of men more especially dependent on the survival of their industry, and, paradoxically, while individually they are as fine a group of men as you can find anywhere, collectively they have been effective in bringing on this crisis by making their employment more burdensome on the carriers." (Tr. 1074)

Mr. Clement pointed out that rail transportation has ceased to be a monopoly, and showed the vital necessity of reducing its costs of operation. He showed that, unless railroad transportation can compete in costs with other forms of transportation, the railroads will continue to lose business and railroad employees will lose their jobs; that it is the competitive cost of performing the service that is going to determine whether railroads or other forms of transportation do the work. (Tr. 1077)

He pointed out that when the men wanted an increase in 1937, at a time when it looked for a short while as though we were coming out of the depression, the railroads accepted the terms and spirit of the Railway Labor Act and entered into mediation, with either a just compromise or arbitration in view. But when the railroads this year approached the employees to adjust the wage situation to meet the present depression, the employees were adamant in conference and, finally, flatly declined to arbitrate, thus putting upon this Board a tremendous responsibility that should have been met between men and management. (Tr. 1078)

He pointed out in great detail the effects of competition on the volume of business done by the railroad industry in which these men are making their living. (Tr. 1079-1082)

"The very survival of the railroads," said Mr. Clement, "and the very survival of the labor they employ, are so firmly tied together, so far as costs of transportation are concerned, that labor cannot ignore the cost situation. This necessity to reduce the cost of transportation involves progress—technological progress—improvement of the art. All this involves capital; and, while the capital may be used by a railroad from the standpoint of its own survival, nevertheless every cent of it, even if so used, means survival of employment; and the only way employment or rail transportation can grow is that rail transportation shall be furnished in equal or better quality at competitive cost to the consumer thereof. The only way rail transportation can grow is for the volume of work to grow; and every dollar that is used in this form of progress is one that immediately and for the future makes for

employment. There is no one who should be more interested in seeing to a proper return on capital, and no one who has a greater obligation to capital, than these men who are dependent on the investment of capital for the continuance of their jobs." (Tr. 1084)

Mr. Clement pointed out that in the trainmen's arbitration in 1926, when the railroads were quite prosperous, the arbitrators based their decision for increased wages on the ability of the railroads to increase the wages. He further pointed out that the temporary deduction in 1932 was based upon the necessities of the railroads and on their inability to pay the previous high rates. (Tr. 1084)

He showed that although the men apparently victoriously secured the 1937 increases, on top of the restoration of the 10 per cent deduction, nevertheless this turned out to be unwise in view of the ensuing depression. (Tr. 1085)

Mr. Clement further gave the full details as to the reductions in officers' salaries on the Pennsylvania beginning with the depression in 1929, and as to the restorations to officers which followed, not until sometime after the restoration of the 10 per cent deduction to the men. He gave most picturesque and interesting testimony as to how officers of the Pennsylvania Railroad have come from all ranks of the service and presented a story which shows why all the employees of a great railroad system ought to be interested in the ability of a man to rise from the ranks to official positions. (Tr. 1087-1091)

2. Testimony of Mr. F. E. Williamson.

Mr. Williamson, President of the New York Central, was one of these men who worked up from the ranks to the highest position in his company, starting as clerk in 1898. He described the New York Central System historically and physically. He described the growth of outside competition with which the railroad industry is met. (Tr. 1202-1204)

Mr. Williamson gave an interesting illustration of the way the railroad industry meets casualties, like hurricanes and floods, such as the recent one in New England. The railroads immediately have to expend hundreds of thousands of dollars to restore their lines and services. Competing highways were damaged probably to the same extent, yet every cent that goes to re-establish the highways is paid for by government funds and used by railroad competitors without any contribution to the restoration of the highways. (Tr. 1204-1205)

Mr. Williamson gave illuminating testimony as to the inability of the railroads to reduce rates to meet the competitive situation, as to recent trends in operating revenues, and as to the inability of railroads to adjust their expenses to lower gross revenues to the same extent as can other industries. (Tr. 1207-1208)

He pointed out the tremendous expenses recently incurred in air-conditioning and in other betterments of the railroad plant and facilities. (Tr. 1208-1209)

The burden of higher cost of materials and supplies and of new social taxes for the benefit of the employees was pointed out. (Tr. 1210-1211)

He showed the great burden of full crew laws, or excess crew laws, and of "make-work" legislation of that kind imposed upon the railroads largely by the efforts of their employees, with detailed figures as to the cost of complying with these laws in the various states through which the New York Central operates. (Tr. 1212-1214)

He gave full details as to the funded debt structure of the New York Central and its leased lines, which conclusively showed that the New York Central is not over-capitalized. He further showed that it obviously is idle to talk about excessive capitalization, with a property such as the New York Central just barely earning operating expenses and taxes, with practically nothing to apply toward fixed charges, to say nothing of return on capital stock. (Tr. 1215-1218)

He very significantly pointed out the effects of high wage rates and of lower business on the reduction of railroad employment by reason of the enforced retrenchments to which the railroads have been put and he had this to say as to the present high wage rates:

> "The crushing burden of the high wage rates now being paid is shown by consideration of the effect of the present wage rates on operations for the first 8 months of the current year. Wages constitute, by a wide margin, the largest single item of operating expenses and, by the same token, the largest single item of charges against operating revenues. The proportion of revenues now consumed by wages is substantially higher than it has been in the past. For the first 8 months of 1938, wages paid by the New York Central represented 53.4 per cent of our total operating revenues; whereas, for the same period of the year 1933, wages represented 45.1 per cent of the operating revenues. For the first 8 months of 1938 we suffered a deficit of $20,500,000. This represents the largest deficit for a similar period ever incurred by our company. If during that period of 8 months, instead of paying the current wage rates, there had been in effect the wage rates that prevailed during the year 1933, our operating costs for the first 8 months of 1938 would have been reduced $16,900,000.; thereby cutting the deficit by more than 82 per cent, to a figure of $3,600,000." (Tr. 1219-1220)

We quote Mr. Williamson's conclusion on the whole situation:

> "A wage scale beyond the capacity of the railroad industry to bear is, in my opinion, a most serious disservice to the men themselves. Unbalanced railroad budgets are most unfortunate. It means that credit has been impaired or has disappeared, so that progress and improvements are curtailed. These conditions, in turn, inure to the benefit of competitors of the railroads and diversion of traffic from the railroad follows. The less prosperous the railroad business, the fewer the men who can be employed and the larger the number of men who must either be furloughed or permanently let out. Higher wage rates that carry with them a higher percentage of unemployment are as bad for the men as for the railroads. In these circumstances, wage rates that are higher than ever before in railroad history simply cannot be sustained, and the traffic cannot support them." (Tr. 1220-1221)

Mr. Williamson gave figures as to total equipment and bad order equipment showing deferred maintenance, and showing that there were important rail laying programs which ought to be done but which had to be deferred by reason of bad financial conditions. And in answer to questions from the Board he gave the details as to the reductions in officers' salaries and as to the restorations, which were not made until nearly two years after the restoration of the men's temporary deductions. (Tr. 1268-1269)

In answer to a further question by a Board member, he gave a very full description of the consideration of the whole problem of wage reductions as it presented itself to the executives of the railroads in the early part of this year. (Tr. 1274-1281)

3. Testimony of Mr. Henry A. Scandrett.

Mr. Scandrett, Trustee of the Chicago, Milwaukee, St. Paul & Pacific, presented the problem from the view of one of the major bankrupt railroads. He traced the corporate history of the Milwaukee, the territory which it serves, and the nature of the traffic which it carries. (Tr. 1307-1314)

For many years the Milwaukee road was highly prosperous. It rode out the depression of the 90's. It has one of the longest dividend records of any western line. Following federal control, its operating results became increasingly poorer, and in March 1925, it went into receivership, and a new company was formed. During the first two years of the operations of the new company its income was sufficient to pay all fixed and contingent interest, with a substantial residue available for dividends on the stock, though no dividends were paid, it being thought the wiser course to conserve cash and improve the physical plant. (Tr. 1314)

Beginning in 1930 traffic fell off very rapidly. In that year the volume of traffic declined about 15 per cent under 1928. It continued to decline in 1931 and 1932, until in 1932 the revenues were substantially

50 per cent of what they had been in 1928. Passenger traffic declined to 30 per cent of the 1928 volume. Cash became depleted, credit was exhausted, and on June 29, 1935, the company went into trusteeship for reorganization under Section 77 of the Bankruptcy Act. (Tr. 1314-1315)

Mr. Scandrett testified as to the extensive program of capital improvements, $111,000,000 having been spent in capital improvements in a ten-year period since the new company began its operations. The difficulty of the Milwaukee road in recent years, he said, has been the same difficulty from which the entire railroad industry has suffered: the narrowing spread between revenues and expenses. (Tr. 1315-1316)

We have already quoted his testimony as to the difficulty in perfecting reorganization plans of railroads in bankruptcy on account of the collapse of railroad credit and the inability to forecast sufficient earnings. (*Supra*, p. 35)

He gave a description of the question of light traffic lines and showed that if his railroad could have a wage scale which recognizes the realities of the situation it would be possible to continue many such lines in operation, for the benefit of the public, of the railroad employees and of the railroad, whereas under existing circumstances many such lines will have to be abandoned. (Tr. 1319-1320)

He pointed out capital improvements which have been made in plant and equipment and further such improvements which must be made but which necessitate the ability to procure capital. (Tr. 1323-1324)

He gave full statistics as to the improved operating efficiency of his railroad, and the improved safety, which result from such capital expenditures. (Tr. 1325-1327)

He gave very full factual and philosophical testimony as to the employees' theory of increased productivity of the men, which we shall discuss under another section of the brief.

He gave full details to show that the Milwaukee is not over-capitalized and further showed that the bondholders and stockholders have taken tremendous losses both in failure to receive interest and dividends and in reduction of market value of their holdings. (Tr. 1334-1335)

On pages 1340 to 1342, Mr. Scandrett testified as follows:

"The result of this proceeding may well have a most important influence on the future of the railroad industry in this country. In the equity and bankruptcy courts, as has been pointed out, are railroads whose mileage aggregates 30 per cent of all Class I railroad mileage of the United States. Struggling on the brink of bankruptcy are many thousand more miles. All are headed in the same direction. This procession should be headed in the opposite direction—and it can be done. The only way it can be done is to avail ourselves of every possible opportunity to improve the financial condition of the industry.

"We can not afford to overlook any major, or even any minor, factor in the present situation. This proceeding deals with a major factor because wages constitute the largest single item of railroad cost. The search for ways of improving operating results did not begin with wages, nor will it end with them. Much has been done in other directions. Much more must be done, in the doing of which there must be the fullest and most whole-hearted cooperation of men and management in the operating field, and of the public and governmental bodies in aiding in the solution of a national problem, which needs greatly to be solved in the public interest.

"No one enjoys having his pay reduced, but the outstanding undisputed fact in this entire controversy is that, at a time when the financial condition of the industry is the worst in railroad history, the wage scale is the highest in railroad history. A reduction of 15 per cent, in view of the reduction in the cost of living, will still leave the railroad worker better off in terms of purchasing power than he was in 1929, when railroad operating revenues were more than 74 per cent higher than they are now, and better off by the same tests than he was in 1932 when his cooperation in agreeing to a 10 per cent deduction helped the railroads through a crisis which, though very grave, was not as grave as that with which they are now faced."

He testified fully as to reductions in officers' salaries, showing that they were cut 10 per cent before the men took their voluntary deduction; that the officers were cut an additional 10 per cent on February 1, 1933, and that still further cuts were made in their salaries on July 1, 1933. He showed that in the case of the lower paid officers their salary reductions were restored coincidently with the men's restoration; that some of the higher paid officers' salaries had been restored fully and some only partly, and that the salaries of principal officers now still range from 90 per cent down to 52 per cent of what they were in 1931. His own salary is 48 per cent of what it was in 1931. (Tr. 1343-1344)

On re-direct examination, and in answer to questions by Dean Landis, Mr. Scandrett gave very full testimony as to the general causes for the receivership of the Milwaukee in 1925. (Tr. 1367-1371)

4. Testimony of Mr. Hale Holden.

Mr. Holden, Chairman of Southern Pacific Company, gave the details as to what is comprised within the Southern Pacific Transportation System and a full description as to the general classes of commodities which it principally transports. (Tr. 1380-1384)

Even with a remarkably diversified and well balanced freight business over 13,000 miles of rail lines, serving about one-third of the continental United States, the net income of the system has declined from over $47,000,000 in 1929 until in the first six months of the present year it has failed by nearly $12,000,000 to earn operating expenses and fixed charges. (Tr. 1384-1385)

Carriers' Exhibit 84, presented in connection with Mr. Holden's testimony, shows the downward trend of the Southern Pacific System finances since January 1, 1929. (Tr. 1386)

The Southern Pacific Company has emerged from every financial panic through 54 years without resorting to reorganization; but it has never been in the straits in which it is struggling today. (Tr. 1390)

During the 12 year period, January 1, 1926 to December 31, 1937, it spent over $291,000,000 in capital investments in additions and betterments on existing lines and for new lines, while its funded debt in the hands of the public increased only about $101,000,000. (Tr. 1390)

Its dividend policy has been very conservative. And yet on February 19, 1932, it postponed further dividends, thereby breaking a continuous dividend record of over 27 years. Since January 1, 1932, more than 47,000 stockholders have received no income from their investment; but payrolls chargeable to operating expenses have, during that 6-year period, varied from 43 to 49 cents out of each dollar of railway operating revenues; and in the first six months of 1938 they were 51 cents, or 9 cents per dollar of revenue more than in its most prosperous year of 1929. In the same period of time the operating ratio has shown a variation from 72.54 per cent to 80.79 per cent, and in the first six months of 1938 it was 84.32 per cent, while the transportation ratio has risen from 37.11 per cent to 42.63 per cent. (Tr. 1391-1392)

Mr. Holden, referring to Carriers' Exhibit 84, gave full statistics as to the declining revenues of his system. The operating revenues dropped 27.7 per cent from 1929 to 1937. Operating expenses could be cut only 20.8 per cent. Net railway operating income fell 62.1 per cent. Net income after fixed charges fell 98.4 per cent. And yet, in the face of this showing, the payrolls absorbed 46 cents out of every dollar of revenue in 1937 as compared with 42 cents in the prosperous year of 1929, and the railroad had to haul very many more tons of freight one mile and many more passengers one mile for a dollar of gross revenue in 1937 than it did in 1929. (Tr. 1393-1394)

Mr. Holden testified:

> "The necessity for performing more units of transportation than ever before in order to earn a dollar makes it all the more evident that if the railroad is to continue to furnish jobs, and if

> it is to have the necessary credit for continued replacements and improvements, the margin between operating revenues and operating expenses must be very substantially widened. That is the purpose of this proceeding." (Tr. 1394-1395)

Mr. Holden gave detailed results of a recent study made on the Southern Pacific System as to the rail freight traffic and the fixed facilities for its handling, showing that even the present operating results have only been achieved by the strictest economy and the greatest efficiency. (Tr. 1395-1396)

Mr. Holden's general conclusions are most significant:

> "From what source is a railroad in our situation to secure the funds necessary to expand its plant? With the constantly narrowing margin between operating revenues and operating expenses—more than half of which expenses are wages—it cannot do so by selling capital stock, because no more than the merest hope of dividends can be held out. Nor in the present state of railroad net earnings is it practicable to sell bonds for such additions and betterments.
>
> "In my opinion, railroad credit can be restored only by considerably widening the margin between operating revenues and operating expenses.
>
> "We cannot go on paying wages on a peak prosperity scale, when our business does not justify it. The empirical theory that 'ability to pay' should not be considered as a factor in wage disputes may be applied with caution to local or isolated situations in peculiar circumstances, but it has no application to a key industry such as the railroads, which cannot be superseded as a system by any other form or forms of transportation.
>
> "The railroad wage increases of 1937 were urged on the erroneous supposition that business was due for a rapid and substantial increase, which was merely the 'ability to pay' argument used to justify demands for wage increases. 'Ability to pay' is necessarily one of the controlling factors in the re-adjustment of wage levels in a nation-wide industry. For example, it is paradoxical that the Southern Pacific System, while running since the first of the present year at a heavy deficit, should be paying 51 cents on its payroll account out of each dollar it receives in operating revenue, when it paid only 42 cents during 1929, a year in which it earned $47,500,000 above fixed charges. And this situation is the more unreasonable when we consider that as shown by Dr. King's cost of living chart now before you and which was taken from governmental statistics, the cost of living in 1938 has declined substantially below the level of 1929.
>
> "Even if a railroad survives the loss of net income and loss of credit that is substantially caused by the present high level of wages, the effect on its employee group, taken as a whole, can be nothing less than disastrous. Mechanization as a substitute for labor wherever capital investment in labor-saving machinery is justified, abandonment of branch lines on which a margin of profit

has disappeared, substitution of buses and trucks for trains, curtailment of forces, drastic economies—all these we have seen; and of dire necessity we will see many more of them with the continuance of the emergency conditions now prevalent in the railroad industry.

"All relevant factors considered, the present level of railroad wage rates appears to me to be a potent factor in preventing the return of credit without which the railroads cannot hope to serve their patrons properly or to withstand active competition." (Tr. 1396-1400)

5. Testimony of Mr. Ernest E. Norris.

Mr. Norris, President of Southern Railway, is another railroad president who has worked up from the ranks, having started work as a telegraph operator. He described the mileage and the splendidly diversified traffic of the Southern. With reference to the problem of rail wages, he said:

"At the outset I wish to make it clear that I do not begrudge labor anything to which it is, as I see it, justly entitled. Railroad labor, by and large, are a high type of loyal workers. I do not advocate that a railroad prosper by imposing wage rates lower than they should be when measured by earning ability of the railroad, the efficiency of employees and living costs in relation to wage rates, but I believe that the wages now paid are too high by any proper measure, and that they should be reduced.

"Whether a wage rate is too high must always take into consideration the ability of the employer to pay, and when you do that you take into consideration his financial condition. If that philosophy is antiquated then, I think, there is no need of me, or any of my colleagues testifying here, and I say frankly, in response to the oft repeated allegation that the financial affairs of railroads are dictated and dominated by that big bad wolf called Wall Street, I know nothing about it. I do know that the well-being of the Southern rests upon me and my selected associates, and us alone. I have never heard of and do not now know of any interference of the so-called Wall Street, or any other bankers. I do hear frequently and eloquently from our many thousands of men and women stockholders, whom I have learned in recent years to refer to as the forgotten men and women, who, like you or I would do, have invested their money savings in a legitimate and dignified enterprise which they thought, and still hope, will be able to make a business living. These common and preferred shareholders constitute approximately 40 per cent of our total financial set-up.

"Since the financial condition of the employer has its ups and downs and since the living costs of the employees are at times high and at times low, and since there are other elements which enter into consideration in naming a fair wage rate, I agree that wage rate should not be static. I mean by this that in times of general prosperity wage rates have properly responded and have risen. In times of depression and reduced cost of living, wage

rates should be lower. The labor policy, as I see it, is that they insist that they keep that high wage rate even though times become bad. They want to start with high wages and grade them again upward when another period of prosperity comes.

"The executives who manage railroad properties, like executives of any other business, I think, owe a duty to those who put their money into the enterprise to properly manage the properties entrusted to their care, do justice to the employees, and earn a fair return on the investment if and when that is possible.

"This proposed wage reduction is, as I see it, an exceedingly practical proposition. There should be no doubt concerning the necessities of the railroads generally and this railroad company in particular; but in order that you may have a clear picture of what confronts us, I shall tell you something of the financial history of my company, and the results of its operations." (Tr. 1433-1435)

Mr. Norris gave detailed statistics as to Southern Railway capital stock and showed that during 44 years of its corporate history the stockholders have received dividends in only 8 years, and yet that, during that period, $117,000,000 which might have been applied to dividends has been plowed back into the property to make possible cheaper and better service. (Tr. 1435-1436)

He gave detailed figures as to the funded debt structure of Southern as compared with Interstate Commerce Commission valuation and book investment. (Tr. 1437-1438)

There was offered in connection with Mr. Norris' testimony Carriers' Exhibit 86, which shows the disastrous decline in the financial results of Southern's operations in recent years. For the first half of 1938, Southern has failed to earn its charges by something like $3,800,000 and, during this time of stress, was paying the highest wages in its history. (Tr. 1440)

He showed in detail the economy, safety and efficiency with which the system's operations have been conducted. As showing the economy of the operations, he pointed out that with practically the same gross revenue in 1937 as it had in 1931, Southern had $6,800,000 more net railway operating income in 1937, notwithstanding heavy increases in taxes and other charges over which it had no control. Since 1937 expenses have been further drastically reduced, but notwithstanding Southern has failed to earn fixed charges for the first six months by $3,800,000. (Tr. 1440-1441)

"We are practically at the end of reduction of expenses," said Mr. Norris, "without the expenditures of more capital. The necessities, therefore, of this railroad should be admitted. They are perfectly apparent. No enterprise can continue to pay out more than it takes in. If this railroad had been guilty of extravagance or inefficiency or if

it had been guilty of failing to help itself, then I do not think the element of necessity should count for much in the equation. However, since this company has not been guilty of either extravagance or inefficiency, I believe, I am firmly of the opinion that its necessities should be given the greatest consideration." He showed that, aside from the high wages, the first and primary thing that has brought about the present condition is the general depression in business, and that the second reason is the coincident development of outside competition. In addition are increased taxes and new social taxes. (Tr. 1441-1442)

After outlining the recent history of wage movements, Mr. Norris showed that on August 1, 1931, all executive officers of his company were reduced 10 per cent in their gross salaries, and all other officers suffered a reduction progressively less. The president reduced his own salary 25 per cent. On September 1 and October 1, 1931, all other monthly paid officers and those in excepted clerical positions took reductions in salaries graduated in proportion to the salaries paid. On February 1, 1932, a uniform reduction of 10 per cent was applied to the salaries of all officers who had not previously been reduced. On July 1, 1932, all officers' salaries of $10,000 per annum or greater were reduced by an additional 10 per cent, with a progressively smaller further percentage reduction to salaries in excess of $3,600. The president's salary at that time was again reduced 25 per cent. (Tr. 1445)

It was not until July 1, 1937, that the salaries of officers and others with base pay up to $6,000 were restored, and no restoration has been made in the salaries of officers whose base pay exceeds $6,000, and all those still are suffering a 19 per cent deduction from their base pay. (Tr. 1446)

Mr. Norris gave detailed statistics showing the increases in payrolls as compared with revenues, and in the hourly rates of pay of employees from 1916 to 1926. He gave similar examples as to increases of certain classes of employees' wages as between 1926, the company's most prosperous year, and 1938. (Tr. 1446-1448)

"Fifteen per cent reduction in wages on the Southern Railway Company will amount to $5,700,000," said Mr. Norris. "It is fair that labor should stand its part of the burden. If we had that wage reduction in during the entire year 1938, instead of failing by $1,884,764 (last four months estimated) to earn fixed charges, the Southern would have net income (last four months estimated) of $3,815,236." (Tr. 1450)

As to the immediate problem of his railroad, Mr. Norris testified:

"The railroad cannot fail to keep abreast of the times. This necessitates the expenditure of new capital. New capital cannot

be raised unless the net earnings are sufficient to induce private investors to put their money into the enterprise. This Company needs rail, needs more freight and passenger equipment, and more modern equipment. It needs power, and certain of its shops and machinery need modernizing. If we had the money to do those things we could save more, perhaps. If we do not keep our plant modern we will lose more and more freight and passengers to our competitors and more and more of our men will lose their jobs. In former years we made up an annual budget for expenditures of capital, but in recent years, while we have a record of what we would like to do, we have not been able to make a budget because we are living from hand to mouth and only make those expenditures which are absolutely necessary for safety." (Tr. 1451)

6. Testimony of Mr. Charles Donnelly.

Mr. Donnelly, President of the Northern Pacific, came up through the Law Department of that railroad. He gave a detailed statement covering the historical and financial background of the Northern Pacific. (Tr. 1505-1510)

He testified that at the present time the capital set-up of the Northern Pacific consists of $248,000,000 of capital stock in round numbers, including the stock put out in connection with the acquisition of joint interest in the Burlington, and a total of $318,000,000 of bonds and equipment trusts. Since its emergence from receivership in 1896, it paid 4 per cent dividends on its preferred stock until the time the stock was called and converted into common in 1902; on the common it paid dividends of 2 per cent in 1899; 4 per cent in 1900 and 1901; 5½ per cent on $155,000,000 in 1902; 7 per cent thereafter until 1922, that is, 7 per cent on $155,000,000 until the increase in 1909, and 7 per cent from that time until 1922 on $248,000,000. In 1922 the dividend was reduced to 5 per cent, at which per cent it continued until 1932, when dividends were discontinued and no dividends have been paid since. (Tr. 1510-1511)

He pointed out the improvement in net railway operating income from 1921, after returning to private control, up to 1929, the best year being 1928, when the Northern Pacific had net railway operating income of $26,000,000. It then began to recede and the record from 1928 to the present as to net operating income is as follows:

In 1929, $21,000,000; in 1930, $14,000,000; in 1931, $7,000,000; in 1932, $2,000,000; in 1933, $6,000,000; in 1934, $8,000,000; in 1935, $8,000,000; in 1936, $11,000,000; and in 1937, $11,000,000. (Tr. 1512)

But in 1938 the story is a sad one to the present time. During the first seven months of this year the Northern Pacific has not earned its operating expenses and taxes. During the first month, it did not even earn operating expenses. The month of August showed a marked im-

provement on account of the large crop movement, which moved earlier than usual, but September will be below August, although normally it would be above. The net result for the eight months is a shortage of $7,500,000 in fixed charges and a showing of $4,750,000 in net railway operating income below 1937. Under these conditions, it is not possible to make additions and betterments to the property which good railroad management would call for and this has not been possible under the general decline in earnings starting with 1932. (Tr. 1515)

Mr. Donnelly showed the need of the Northern Pacific for new equipment but the impossibility, under present conditions, of floating new equipment trust issues because of lack of cash to make the initial down payment. (Tr. 1516-1517)

Last year, he testified, the management put up a budget of $11,000,000 capital expenditures to the board and that budget was cut to $3,000,000 and practically the whole of that amount put in roadbed. This year, he testified, no budget has been submitted but it is perfectly evident that the amount of expenditures which can be made will be even less than those authorized last year. (Tr. 1517)

Mr. Donnelly testified to the uniformly pleasant relationships between the Northern Pacific and its employees. They have had no labor difficulties whatsoever and there has never been any friction except in cases of nation-wide movements such as the shopmen's strike of 1922. The Northern Pacific was one of the first companies to establish a pension system. It made generous provision for group insurance. In conjunction with its employees it maintains a beneficial association which is a fine arrangement for taking care of sick and injured. (Tr. 1517-1518)

With reference to the consideration which the railway executives gave to the present proposed wage reduction, Mr. Donnelly testified as follows:

"But I was one of those who met in March of this year of the railroad presidents, and met to consider this question of a decrease in pay. I may say also that the operating vice president of the Northern Pacific was one of the group of men who negotiated with Mr. Harrison and his associates, and later with Mr. Whitney and his associates, an increase that was allowed first in August and then in October, and I might say in perfect frankness that I felt very strongly that that increase ought not to have been authorized, not because of a disinclination to give to the men every dollar that we could possibly give to them, but because I realized that we were then going into the very slump that we have finally wound up in, and that it was highly probable that we would be before the men with just the kind of a request that we were since obliged to make.

"But other counsel prevailed, the increase was authorized, and it amounted—it has been spoken of here as 8 per cent. It

amounted in the case of the Northern Pacific to about 7 per cent of our payroll.

"Well, as it is known, the railroads then sought to protect the situation by an application to the Interstate Commerce Commission for an increase in rates. We went before them in November and early December and were disappointed, of course, in the amount of an increase which was authorized, and soon after the announcement of that decision, it became recognized, I think generally throughout the railroad world, that we would have to get some relief in some other way, and I felt no hesitancy whatsoever, speaking from the Northern Pacific standpoint, in going to our men and saying to them, 'You know what the situation is. Our situation is the worst in railroad hitory. Your situation is the best in railroad history. I think it is a fair thing to ask you to do for us now in this emergency something on the order of what you did for us in 1932, because we need it very much worse.'

"And I want you gentlemen to understand that that was the approach to the proposition. After we held that meeting in Chicago, a group of men were named to go to the railroad labor representatives and suggest that very thing, and it was very promptly—the suggestion was very promptly turned down.

"You will recall that what was done in 1932 was the employees consented to a deduction of 10 per cent in their pay, the basic standard remaining unchanged. Now we asked them, as I say, for a 15 per cent reduction. It was refused, and then we went on with this proceeding." (Tr. 1518-1521)

Mr. Donnelly put very frankly before the Board the immediate financial crisis in which the Northern Pacific finds itself, with a total of $11,000,000 quick assets easily available. He has interest charges to meet next January of $6,000,000, which he expects to meet unless things get much worse. However, he testified that it is perfectly obvious that he must consider the obligation to meet that $6,000,000 interest charge and that if he cannot meet it he is not going to be able to keep up the present rate of operating expenses and he will not be able to pay the present wages. Somebody else, he said, might pay them, that a trustee in bankruptcy could and probably would, but the Northern Pacific would not be able to and the property would be taken out of its hands. (Tr. 1522)

Mr. Donnelly commented on the fact that he understood the employees were largely moved in rejecting the present wage decrease by the fact that when they consented to the 1932 deduction it was held out to them that there would in all probability be an increase in railroad employment and in fact there was none. In this connection, Mr. Donnelly testified:

"But, gentlemen, what I want to get clearly in your minds is the fact that what was said there in 1932 was the expression of a

hope. In the very nature of things, it could not be a binding engagement. We did not say absolutely, 'If you will do this, we will do that.'

"If I today here say to our employees and say to you that I feel reasonably confident that with this 15 per cent reduction or deduction, or whatever form it takes, that there will be an increase in employment, that if things continue to go to pot, there probably would not be, and I would not consider that I had been guilty of a breach of faith.

"Take that agreement that was negotiated in 1932,—the railroad president who was the most active in bringing it about was Daniel Willard, the President of the Baltimore & Ohio, and I think every one of these gentlemen will attest the fact that if organized labor generally has a friend in the world, it is Daniel Willard, and that he would be the last man to let anybody down. He thought and said with perfect honesty, 'If you will do this, we believe that there will be an increase in employment.' But you know what the year 1932 did to us. You know the condition the country was in at the time of the accession of the present administration in March, 1933." (Tr. 1523-1524)

His testimony is clear that if all the outside properties owned by the Northern Pacific and against which its outstanding capitalization stands are considered, there is clearly a balance in excess of outstanding capitalization of at least $175,000,000. Of the outstanding capitalization of $566,000,000, $248,000,000 represents capital stock. There has been no return paid on that stock since 1932, and Mr. Donnelly asserted that the capital stock could be put out of consideration and there would be left a margin over outstanding bonds of $316,000,000. "But," said Mr. Donnelly, "what is the point, gentlemen, in talking about the capitalization or valuation or overcapitalization of railroad properties that are barely meeting their expenses? Suppose we had had no capitalization outstanding, what would we have done during the first six months of this year?" (Tr. 1527-1528)

He testified that the Northern Pacific had cut its equipment maintenance during the first six months of this year by $2,340,000, showing a recognition that it was becoming less and less able to pay the high wages. (Tr. 1528)

He further testified that if the voluntary 10 per cent deduction in pay had not been taken in 1932, as low as the level of employment on the Northern Pacific was thereafter, it would have been much lower. After the increases of last year, the road necessarily began to lay off men in the late months of 1937. He testified that his road would have been able to do more maintenance work and to have maintained employment better had it not been for the wage increases of last year. (Tr. 1531-1532)

Mr. Donnelly epitomized his view of the whole case by quoting Chief Justice Stacy's question to Mr. Clement at the close of his testimony:

"As I get your testimony before us, the management of the railroad, those men responsible for its running, considering all of the circumstances, the interest of the institution and the men as well, have come to the conclusion that in the present crisis this is the best thing to be done?"

Mr. Donnelly stated he assented to that epitome without any qualification. (Tr. 1533-1534)

7. Testimony of Herbert A. Enochs, Chairman of the Carriers' Joint Conference Committee.

Members of the Board, and in particular Dean Landis, evinced considerable interest in the question of just what steps were taken by the railroads in arriving at a decision to seek a 15 per cent wage reduction and in the preliminary handling of that question with the men. The testimony of the railroad executive witnesses illuminated those questions from the point of view of the railroad executives. We furnished as a witness the Chairman of the Carriers' Joint Conference Committee, Mr. Enochs, who referred to himself and his Committee as being just the "deck hands," and he gave, we submit, the most engaging, straightforward and open testimony, full of not only amusing but highly interesting reflections of human psychology in the handling of a matter like this between managements of a great industry and the leaders of its organized labor. We feel that the Board must have been much impressed by the testimony of Mr. Enochs.

It will be recalled that he came up through the trainmen's ranks, joined the Brotherhood of Railroad Trainmen in 1900, became an officer of the Brotherhood and represented it against managements. He is thoroughly familiar with the fields on both sides of the fence. (Tr. 1614)

There was introduced in connection with his evidence all the documents covering the handling of this matter, from the negotiating notices of the carriers of May 12, 1938, Carriers' Exhibit No. 106, throughout all the stages of negotiations, national handling, mediation, and down to the agreement of the carriers to arbitrate and refusal of the employees' organizations to arbitrate, Carriers' Exhibits Nos. 117 and 118.

In connection with the letter of the eighteen organizations refusing to arbitrate, it is interesting that that letter puts forward probably a wholly new theory for refusing to arbitrate. The philosophy of that

letter is, as stated by Mr. Fort in commenting on it, "that our case is so strong and your case is so weak that we won't arbitrate with you." (Tr. 1637) The refusal of the Trainmen's Brotherhood to arbitrate was of the same tenor.

Mr. Enochs' testimony showed that it was really the employees, in January, 1937, who inaugurated the wage movement culminating in the increases of 1937, and that the "embers were kept burning all the time." (Tr. 1645) He traced in detail the prior movements, the voluntary 10 per cent deduction from pay in 1932 and the various handlings culminating in its complete restoration in July, 1935. (Tr. 1650-1651)

He outlined the earlier general wage movements, beginning with the period prior to the World War, the increases by the Director General under federal control by General Order No. 27, the further increases in 1920 by the Railroad Labor Board by Decision No. 2, the decreases of 1921 by Decision No. 147, and the further decreases in 1922 by the Labor Board. (Tr. 1652-1656)

He testified as to the enactment of the Railway Labor Act of 1926 and as to the numerous arbitrations which had been held under the provisions of that Act and the wage fixations in a large number of instances as a result of conferences, mediations and arbitrations under that Act. In one case at least, he testified, wages were adjusted according to the recommendations of an emergency board. (Tr. 1657)

He testified fully as to the way in which the employees involved in this proceeding are paid. All except those in train and engine service are paid on an hourly, daily, weekly or monthly basis, with overtime for all hours worked beyond the hours constituting their normal assignment, except in the case of those few employees receiving a rate comprehending all services rendered. (Tr. 1658-1659)

He showed that the method of paying engine and train service employees is without any parallel in any other industry or employment. Engine and train service employees are engineers, firemen and hostlers in engine service, conductors, assistant conductors, brakemen and baggagemen in train service, and switch tenders, the latter being engaged solely in yard service. (Tr. 1659)

The distinction between road service and yard service is that road service, both as to freight and passenger movements, is movement of trains over the road from terminal to terminal, including such work in terminals as may be permitted under the agreements. Yard service includes the making up and the breaking up of trains and the preparation for or the culmination of the road movement, together with the switching of cars for industries, all within terminal limits. (Tr. 1660)

In yard service the pay is computed entirely at hourly rates, with a minimum of 8 hours for each day an employee comes on duty. If the employee works more than 8 hours, he is paid for each hour beyond 8 on the minute basis at overtime rate of 1½ times the straight time hourly rate, so that the method of paying yard employees is not materially different from the method generally in effect for paying employees in other industries. (Tr. 1661)

But in road service the train and engine service employees are paid on a mileage and hourly basis commonly known as the dual system of pay. Mr. Enochs' description of this dual system of pay was as follows:

> "Under this method these men are paid on the basis of the miles which they run and if it takes longer than a certain time to run the miles, so paid for, they are paid for any hours over that certain time in addition to the pay for miles.
>
> "For instance, in road freight service, eight hours or less, one hundred miles or less, constitutes a basic day's work for pay purposes for engineers, firemen, conductors, and brakemen. Thus, for the purpose of computing part of their compensation, each 12½ miles run is equivalent to an hour's work. A basic daily rate of pay is established for a day's work, and no matter how few miles the employee runs or how few hours he works, he receives at least one day's pay if he goes on duty at all. This basic daily rate, aside from constituting a minimum day's pay, is only one of the factors used in computing the compensation for each trip, run or tour of duty, and does not represent the amount of compensation earned for a day's work.
>
> "Primarily these employees are paid for the miles actually run, with a minimum of 100 miles. If the employee runs more than 100 miles, he is paid for each mile run at a rate which is 1/100th of his basic daily rate." (Tr. 1662)

In giving this description, the witness was referring to freight service and was also speaking of what is called straight time payment. There is also overtime payment for freight service. If the time consumed in running the miles averages less than one hour for each 12½ miles paid for, the employee receives pay only for the miles actually run, with a minimum of 100. In that case he would receive only straight time payment. But if the time consumed in running the miles paid for averages more than one hour for each 12½ miles paid for, he is also paid overtime for the excess hours consumed. For instance, if he runs 125 miles, he is first paid for 125 miles, 1¼ basic days' pay at the mileage rate. This is straight time pay. If this run is made in 10 hours, this being the equivalent of 125 miles at 12½ miles per hour or less, no overtime payment is made, but the employee still receives 1¼ basic days' pay, that is to say, pay for 125 miles. But if it should take the employee more than 10 hours to run this 125 miles, he would be paid,

in addition to the pay for the 125 miles, punitive overtime, time and one-half, for all time in excess of 10 hours. (Tr. 1663-1664)

If it took him 12 hours to make this run, he would thus receive 2 hours overtime at punitive rates, in addition to his straight time pay he received for running 125 miles. Similarly, if he ran less than 100 miles but it took him more than 8 hours to do it, he would be paid for 100 miles, which is the minimum, and he would be paid punitive overtime for all time after the 8 hours. Thus, if he ran 50 miles in 9 hours, he would be paid for 100 miles, which is the minimum, and in addition would be paid for 1 hour overtime at the punitive rate. He would thus receive for this run of 50 miles 1-3/16ths basic days' pay. (Tr. 1665)

In through passenger service the method of payment is the same except that for engineers and firemen 5 hours or less, 100 miles or less, constitutes a day's work for purposes of pay, while for conductors and trainmen 7½ hours or less, 150 miles or less, constitutes a day's work; and with the further exception that although overtime is paid, it is not paid at the time and one-half rate but is paid at the straight time rate. That is the method of payment for through passenger service. (Tr. 1665-1666)

There is a difference as to the method of payment for short turn-around passenger service, which consists of one or more turn-around trips, no single trip of which exceeds 80 miles in length, a service which is generally found in local, suburban or commuter service. In such service, if there is a passenger run which involves one or more turn-around trips back and forth between two points and the distance between the two points is less than 80 miles, this is called short turn-around service. The dual basis of pay applies to short turn-around service and the only real difference between its application to this service and its application to through passenger service is the way that overtime pay is computed. As in the case of through service, the employees are paid for the miles actually run, with a minimum of 100 miles for the engine crew and a minimum of 150 miles for the train crew as to straight time. But the difference in short turn-around service is that the speed at which trains in that service are operated has nothing to do with payment of overtime. Employees in turn-around service get paid for overtime for all elapsed time in excess of 8 hours from the time they first report for duty until they are finally relieved, with one exception: if they are relieved from duty at a terminal between legs of their run for more than 60 minutes at any one time during the first 10 hours, these 60 minute periods up to a total of 2 hours are deducted from their overtime hours. In other words, they can work as long as 8 hours, within 10, without any overtime payment, so long as the time deducted is deducted in periods of as much as 60 minutes each at terminals. (Tr. 1668)

Going back to the freight service, the pay for 100 miles is expressed as a basic daily rate. The rate paid for each mile run, with a minimum of 100, is simply 1/100th of this basic daily minimum rate. Therefore, without taking into consideration any overtime at all, if a man runs 100 miles or less, he receives one so-called basic daily rate of pay, and if he runs 125 miles, he gets, in straight time, 1¼ times the basic daily rate of pay. Likewise, if he runs 150 miles, he gets 1½ times his basic daily rate of pay. (Tr. 1669-1670)

As to overtime, that is computed in road freight service by using an arbitrary speed of 12½ miles an hour. In other words, if a road freight service employee has not averaged at least 12½ miles per hour, for all miles for which he is entitled to pay in straight time pay, then he receives overtime in addition to his straight time pay. This 12½ mile speed basis is arrived at by dividing the 100 miles, which is set out as one of the measures of the day, by the 8 hours, which is set out as the other measure of the day in the schedules of rules. (Tr. 1670)

It results that, for purposes of computing compensation of engine and train service employees in road service, a so-called "day" is not the same as a calendar day. Take road freight service, to illustrate the difference. 100 miles or less, 8 hours or less, constitutes a day's work for the purpose of pay. On any one calendar day an employee may run for instance 125 miles. Without taking into consideration any overtime that might be paid him, he would be paid for the 125 miles, that is, straight time of 1¼ times the amount of the basic day's pay, thus making 1¼ basic railroad days' pay of straight time in one calendar day. In addition, he may also receive pay for overtime if, in running 125 miles, he consumes more time than the equivalent of 1 hour for each 12½ miles run. Thus a man may work only 20 calendar days in the month and yet make 25 or more railroad days' pay. (Tr. 1672-1673)

A more concrete illustration is to take a particular engineer in through passenger service between New York and Washington on the Pennsylvania Railroad. The distance is approximately 226 miles and on one calendar day the engineer runs from New York to Washington and back again. In this case he would be paid for 452 miles, or slightly over 4½ days' pay in one calendar day. By working 10 calendar days in the month, this engineer makes the equivalent of about 45 days' basic pay. (Tr. 1674)

Another striking example of the difference between a calendar day and a railroad day in connection with the method in which these employees are paid is that of a train on the Burlington which runs from Chicago to Denver in approximately 16 hours. The railroad pay is 10 basic days' pay to the engineers who operate this train for this 16 hour period. (Tr. 1674)

It should also be mentioned that, in addition to pay for miles run and overtime hours worked, these employees receive payments which are commonly referred to as "arbitraries" and "constructive allowances." These payments consist in part of compensation for performing certain special duties, as when road crews perform switching at initial and final terminals. They consist also of compensation under certain conditions when no transportation service is rendered, for example, payments for being held away from the home terminal for dead-heading, for being called for service and not used, for so-called "run-arounds" and a number of other items. (Tr. 1674)

In addition, the rate of pay varies with the weight of the engine on drivers, a higher rate being paid for the heavier locomotive. (Tr. 1675)

After cross-examination, Mr. Enochs was questioned by a member of the Board about what went on in the Carriers' Joint Conference Committee as to reaching the conclusion to recommend and recommending to the railroad executives the 15 per cent wage reduction and as to the handling of this proposition by the executives. Mr. Enochs explained that there was no secret or mystery about this matter whatsoever and he proceeded to give a very full, frank, and human explanation of the details of the handling, both by the "deck-hands" and by the executives. (Tr. 1683-1706)

The Carriers' Joint Conference Committee spent two full days reviewing the whole subject and Mr. Enochs said of their work, "We considered all of the factors which anyone would consider in settling that matter, and working it over and testing the whole thing out, and we arrived at the opinion that 15 per cent would leave the employees better off—3 or 4 per cent better off—than they were in 1932 when the depression had not been as severe as we were then experiencing." (Tr. 1687)

The Carriers' Joint Conference Committee reported its recommendation to the executives. There were certain of the railroad presidents who believed that the leaders of the organizations "had reached such a state of understanding and of sympathetic interest with the carriers, that they would listen to what the presidents had to say about taking some steps toward ameliorating this general situation, and they came to Washington and that is where they met Mr. Harrison. Of course it was kicked out the window because I suppose maybe the people were mistaken, but I don't know—but they didn't flux or didn't mix." (Tr. 1690)

The result was a second meeting of the railroad executives. As to this meeting, Mr. Enochs characteristically testified, "So the fellows that were the advocates of cooperation and 'let us lie in the bed together as brothers,' they just held their peace at this second meeting. That is when the 15 per cent reduction was inaugurated." (Tr. 1694)

The witness' picturesque summary of the previous conference between executives and labor leaders in which the plan of cooperation was "kicked out the window" was that both sides used "weasel words." When it was suggested that perhaps this was because the "deck-hands" were not in on that conference, Mr. Enochs testified that if they had been, perhaps more "weasel words" might have been used. (Tr. 1696)

8. Conclusions From the Testimony of the Executives and Mr. Enochs.

We think the Board must find from the testimony of all the executives and of Mr. Enochs that, whatever may be the Board's ultimate conclusion as to the fairness, reasonableness or wisdom of the proposed wage reduction, certainly it is a proposal which was worked out and presented to the men by the railroad industry in the best of faith, and that it represented the combined best judgment of the Carriers' Joint Conference Committee and of the responsible executives of the railroads as to what was the best thing to be done in the present crisis, from the standpoint of the men themselves, from the standpoint of the railroad industry, and from the standpoint of the best interests of the public.

The suggestion and insinuation made throughout this case that it was a plan inspired by the "big bad wolf of Wall Street," or by the "spider" of a financial web, or by a group of bankers interested in bonds or stocks, is wholly without foundation and merits no consideration from the Board.

PART II.

ARGUMENT.

I.

THERE IS NO SUBSTANTIAL DISPUTE AS TO THE BASIC FACTS. THE REAL ISSUES ARE CONFLICTS OF PHILOSOPHIES AND AS TO CONCLUSIONS TO BE DRAWN FROM ADMITTED FACTS.

As this case has developed from day to day, it has become more and more evident that the basic facts involved are undisputed. The factual case presented by the carriers has been based entirely upon official and recognized statistics. We have used the official statistics of the Interstate Commerce Commission, of the United States Department of Labor, of the United States Department of Commerce, of the United States Department of Agriculture, and of the Bureau of Internal Revenue. We have further used and presented the published statistics of the National Industrial Conference Board which are generally used and recognized as authoritative. We have brought together from all official and recognized sources all the pertinent statistics and have presented them in various aspects.

In the early stages of the case there was the suggestion or intimation by the employees and their counsel of some criticism of the statistics presented in the carriers' case. But as the case has progressed that suggestion or intimation necessarily has progressively disappeared. When the employees came to present their own case they, of course, had to go to exactly the same sources for their statistics because they are the only available sources. By and large, all the statistical showing by the employees has but corroborated and confirmed, and in some cases amplified the details of, the statistical showing made by the carriers. After all, there are only these certain recognized sources for statistics covering the railroad industry and both sides have necessarily used them.

It results that the basic factual and statistical data relied on by both sides are the same. It further results that there is no real or substantial conflict between the parties as to the basic facts. The conflict arises out of different conclusions drawn from the admitted facts, out of different interpretations as to the significance of the same admitted facts, and out of different and conflicting philosophies as to the meaning and effect of those facts as bearing upon the ultimate question here in issue.

When we say this, of course we have reference to the basic facts and figures, the statistics of the industry, the proven facts. We do

not, of course, admit the truth of any of the "smear campaign" in which the employees have indulged in this case, the charges of "banker domination," of "looting," of "corruption" or any of the invective and unsupported charges which have been thrown into the case in the form of assertions, conclusions and charges based upon no evidence in the record. The violent diatribes contained in the conclusion evidence of the witness Lauck, based upon no proven facts, those contained in the Trainman's Exhibit 1, "Main Street not Wall Street," the similar generalizations of the witness Whitney and other similar generalizations of other witnesses—all these we put to one side as having no probative force, as utterly failing to rise to the dignity of evidence, and as having nothing whatsoever to do with the issues in this case.

We shall deal more particularly with the manner in which the respective statistical showings confirm each other as to the basic facts in subsequent sections of the argument, and in those subsequent sections we shall attempt to analyze the conflicting philosophies arising out of the contrasting viewpoints from which the carriers and the employees regard the admitted basic facts.

II.

THE CONFLICT OF PHILOSOPHIES AS TO EMPLOYEE PRODUCTIVITY AND AS TO PRODUCTIVITY OF CAPITAL. "IDLE DOLLARS" AS AGAINST "IDLE MEN".

1. The Remarkable Increase in Efficiency of the Railroad Industry Since Federal Control.

One of the first and outstanding conflicts is that between the respective theories as to so-called "productivity of labor" or "increased efficiency of labor", and that as to "productivity of capital" or "increased efficiency of plant."

We have reviewed in Part I of the brief in detail the striking showing made by the railroad industry in increased efficiency and economy of operation and in increased safety of operation since the World War. There is no dispute as to this showing. As to safety, counsel for the eighteen organizations, in opening statement, asserted that safety on the railroads has improved to the point where a person is safer on a railroad passenger train now than he would be sitting in his home. As to increased efficiency and economy of operations, the carriers' showing is not only fully confirmed by the testimony of employees' witness Keller and by Employees' Exhibit No. 10, but indeed his testimony and his exhibit made a fuller and more complete showing as to the extraordinary increase of the efficiency of the industry than did the carriers. A study of Employees' Exhibit No. 10 and of Mr. Keller's testimony showing this increase in the economy and efficiency of operations of the industry since the period of federal control ought to leave no doubt in any impartial mind that government ownership or operation of the railroads is the worst thing that could happen in the interests of the public and in the interests of the employees.

Mr. Clement, President of the Pennsylvania, on cross-examination gave picturesque and characteristic testimony as to what happened to his railroad during Government operation. "In 1920," said Mr. Clement, "my railroad came out of government ownership (operation), demoralized, no discipline, wrecked from top to bottom, its equipment destroyed—the saddest commentary upon efficiency in America that I can think of."

Asked to compare the fact that more than twice as many employees were employed during federal control as at the present, Mr. Clement said, "Don't compare a wreck with an efficient machine, and then on the other side say to me, am I proud of the efficiency? * * * I am proud of the efficiency today, and I was sad over what happened to us during the war." (Tr. 1122)

With this wrecked railroad machine coming out of the period of federal control and returned to private operation, it is interesting to study the complete showing of Employees' Exhibit No. 10 as to the amazing improvement in efficiency of operations during the seventeen years ensuing. A look at Table No. 12 in Employees' Exhibit No. 10 and at the chart following it, shows the striking increase in efficiency in the reduction of operating expenses per thousand revenue ton miles. A comparison between this table and chart and the table and chart in Carriers' Exhibit No. 24, Witness Parmelee, shows that one confirms the other completely. The same showing is made by Table No. 13 and the graph based thereon in Employees' Exhibit No. 10, showing the reduction in operating expenses per thousand gross ton miles. The same showing is made by table No. 14 and the graph based thereon, showing improvement in ton miles and car miles per dollar of operating expenses.

Table No. 34 and the graph based thereon, in Employees' Exhibit No. 10, presents a complete picture of the continuously increased operating efficiency shown by the factors gross ton miles per hour, tons of freight hauled one mile in one hour, average cars per train, and average speed per hour. The same is true with reference to Table No. 36 and the graph based thereon showing reduction in loss and damage costs, loss and damage per loaded car, freight loss and damage, damage to property, and cost of clearing wrecks. It was admitted by the Witness Keller that these tables and graphs in his exhibit presented a very striking picture of the increased efficiency of the railroad industry since federal control. (Tr. 2011)

Thus with regard to the improved efficiency and economy of operations and with regard to the improved safety of operation in the industry there is no dispute as to the basic facts. The conflict lies entirely in the question as to what has caused this improvement. The witness Keller frankly stated at the outset of his testimony that the purpose of his study and of his Exhibit No. 10 was not to determine who or what is responsible for this greater efficiency, but was merely to review the improvement itself. (Tr. 1942-1943)

2. The Fallacy of the Theory of Increased Productivity of the Employee.

Of course, the theory of the employees is that this striking record of improved efficiency means, and is the result of, increased efficiency of the employees and so-called increased productivity of employees. In order to try to point up a basis for this argument, the tables and charts in Employees' Exhibit No. 10 constantly measure the improved efficiency and economy of the industry, not in terms of net revenue or of the dollar product of such increased efficiency, but in terms merely of

the number of men employed by the industry and of the total payroll paid by the industry, a comparison which in our opinion has no ultimate significance. Of course, as the operating efficiency of the industry has increased and as total traffic has fallen off, the decrease in the total employment on the railroads and the decrease in the total payroll on the railroads, or the decrease in the average pay per employee, has produced the constantly widening spread between the operating efficiency of the industry in terms of traffic units, or in terms of any of the other factors of operating efficiency, as compared with the declining employment, payroll and pay.

To compare these factors of operating efficiency with the total employment, or with the total payroll, or with the average pay or wage per employee, is merely to measure the decline in employment. It in no way measures the increased efficiency of an individual employee or the increased productivity of his labor. Take the elements of operating efficiency often commented upon by the employees during the case, the increased tractive power of locomotives, the increased length and speed of trains, and the increased carrying capacity of freight cars. These are essential factors which have produced the striking increase in operating efficiency pointed out both by carriers' witnesses and employees' witnesses. The ultimate question is, what has contributed to the production of these improved factors which have increased the efficiency of the industry. Obviously, increased tractive power of locomotives is not the result of increased efficiency or productivity of employees. Obviously, increased length and speed of trains and increased carrying capacity of freight cars are not the result of increased efficiency or productivity of the work of individual employees. They are the result of capital investments in more modern and more powerful locomotives and in more modern cars of increased carrying capacity, which enable the railroads to carry more units of traffic with higher speed and efficiency and with less relative operating expenses. The employees do not physically push the locomotives or carry the cars: They man more efficient machines.

Mr. Scandrett testified as to the capital expenditures made for improvements of this kind and as to the resulting improvement in operating efficiency. These improvements have been made possible by large capital outlays and were vitally necessary to enable the railroads to compete effectively with other transportation agencies. Mr. Scandrett testified that his road should spend for improvements to road and equipment $30,000,000 during the next five years, and that it should expend for new equipment $35,828,000, or an average annual capital requirement for both of $13,000,000 (Tr. 1324). He showed in detail the increased operating efficiency as the result of capital expen-

ditures already made, calling attention particularly to the improvement in the following factors: cost of steam locomotive repairs per locomotive mile; cost of freight car repairs per car mile; accidents due to engine failures; number of miles of freight cars run per hot box; the same as to passenger cars; loss and damage payments per cent of freight and switching revenue; fuel consumption; casualty rate as to employee accidents; cost of track and bridge maintenance; ballasting of new rail. All of these factors showed extraordinary improvement between 1929 and 1937. (Tr. 1325-1326)

Mr. Scandrett then dealt extensively with the argument which the employees base upon this undisputed showing of the efficiency of the industry: their argument as to the so-called increased productivity of the man. He pointed out that increased production is an increase in the number of units produced, and therefore an increase in the total volume produced. Where there is an increase in the production, with no increase in the number of workers, the production, measured per worker, is increased. Similarly, of course, where there is an increase in units of production, but with a decrease in the number of workers, there is a correspondingly greater increase in the production measured per worker. But, as Mr. Scandrett pointed out, it does not follow from this that the worker is responsible for the increase. There may be some increase in his individual efficiency, and to whatever extent there is, the output is increased thereby. But it is clear that the major increased productivity of the industry is the result of these capital improvements which have built a more efficient plant or machine, capable of producing more units of production for the same or a less number of employees, with the same or not greater effort and responsibility on the part of the individual employee. (Tr. 1329-1330)

Clearly, to whatever extent the improved efficiency of the industry in general is the result of improved equipment, and of a modernized and more efficient machine, this increase is the product and result of the capital investment which has produced the more efficient machine.

Mr. Scandrett gave specific illustrations of the point. A railroad provides a trackman with a wrench for tightening bolts, which wrench costs $1.19. With it the trackman is able to tighten 280 bolts a day. On another section the railroad provides a bolt tightening machine, which cost it $775; and a similar trackman, with no greater, and indeed with less effort, can tighten 2,000 bolts a day with the machine. He produces seven times as much daily output of bolt tightening as the man with the $1.19 wrench, and his work is better done, because the machine tightens the bolts tighter and more uniformly. (Tr. 1330)

Working by old hand methods, 20 men with $20 worth of rail tongs were required to handle a 90-pound rail, and with these tools they could

lay rail for one mile of track per day. By modern methods, with a track-laying machine costing $3,500, 5 men can handle heavier rail and place the rail on two miles of track per day. If this be attributed to increased efficiency of employees, by relating the increased productivity to the number of employees, it would represent an 8-fold increase in the productivity of the individual employee. According to the philosophy of the employees, it would justify increasing the wages of each of the five men handling the track-laying machine 800 per cent above the wages of the 20 men handling the rail tongs. (Tr. 1331)

However, it is obvious that the increased productivity is the result of the capital expenditure of $3,500 for the track-laying machine, just as it was the result of the capital expenditure of $775 for the bolt-tightening machine. If this is true, and we think it must be incontrovertible, then the so-called increased productivity is an increase in productive efficiency of the industry resulting from capital expenditures in improving the machine. It is, in truth, increased productivity of capital, and not increased productivity of employees.

Mr. Scandrett gave other illustrations of this same principle: the increased productivity of $21,000 worth of adzing machines as against $25 worth of hand adzes; the increased productivity of $960 worth of power drills as against $75 worth of hand drills; the increased productivity of more powerful locomotives and heavier trains carrying traffic at higher speeds over improved track and roads; more airbrakes, trucks, draft gears and bearings; and better engine water through treating plants. (Tr. 1331-1332)

Then Mr. Scandrett said:

> "Have these improvements and this increased production made the duties of the train and engine men more onerous? Quite the contrary. Modern locomotives equipped with automatic stokers, power reverse gears, speed recorders and other refinements have lessened the physical labor of both the engineer and the fireman. As to the trainmen, many trains now run over an entire freight division without stopping for coal or water or train inspection, which means less physical effort for the men.
>
> "Because of the dual basis of pay, which another witness will explain in detail, the increased speed of trains has given both train and engine men an increase in wages per hour worked without any change in the basic rates of pay, and, in addition, in the case of the engineers and firemen, the increased weight on the drivers of the locomotives has automatically increased their rates of pay." Tr. 1332-1333)

Mr. Scandrett stated the true philosophy as to this question of productivity. He said:

> "I should like to revert for a few minutes to what I regard as the proper philosophy with reference to this subject of productivity. As I have said, I believe in good wages and a rising standard of living. Notwithstanding my belief that increased production has primarily been the result of improvements in the art and has been made possible by tremendous capital expenditures, I believe that, in the interest of a higher standard of living, the workers should share in the resulting benefits to the extent that this is possible. Assume, if you will, a railroad or any other industry where wages are on a fair level and where the return of capital on its investment is also fair. Improvements in the art take place, involving heavy additional capital expenditures, with the result that the net income of the industry is increased substantially after allowing for a fair return on the new capital. In such a case, I believe that, notwithstanding the additional net income has been made possible by the new capital, and without a heavier burden being imposed on the worker, the worker should nevertheless, in order that the standard of living be raised, participate in the improvement through an increase in pay. That, as I understand it, is the essence of profit sharing. We have, however, no such situation here. The profits are absent. Because of the great diminution in traffic and of the other influences which I have mentioned, of which one of the most important is a higher wage scale than in more prosperous times, the railroads, notwithstanding the benefits which have been derived from a greatly improved plant made possible by heavy capital expenditures, are worse off than they were before the expenditures were incurred. Had it not been for these expenditures, their condition would be still more deplorable. The savings have all been absorbed by the railroads' increased costs and the loss of traffic which are shown on this record." (Tr. 1337-1339)

We submit that Mr. Scandrett put his finger on the basic fallacy of the employees' argument regarding increased productivity of labor. The fundamental basis of such an argument is necessarily a theory of profit-sharing, that the employee should share in the increased profits produced by increased productivity of industry. No one can quarrel with this as an ethical principle. But to apply a fundamental principle of profit-sharing, the sharing must be confined to the profits, and where there are no profits there is nothing to share. It is a denial of the whole basis of such profit-sharing doctrine to measure the sharing not on the basis of the profits to be shared, but merely on the basis of the number of men employed.

Also, we submit that it is completely fallacious for the employees to attribute to themselves and to a supposed increase of their individual efficiency, the increased efficiency which has resulted from capital expenditures in the building up of a more efficient machine which they have to operate.

3. Dr. Parmelee's Rebuttal Testimony on the So-called Increased Productivity of the Employee.

On rebuttal, Dr. Parmelee gave most significant testimony bearing on this theory of the so-called increased efficiency of labor as reflected in the statistics of the improved efficiency of the industry. It will be found in the last volume of the transcript. In substance, he said the following:

Statistics have been presented to this Board purporting to show increased "efficiency and productivity" of railway employees. These statistics are descriptive not so much of employee efficiency and productivity as they are of what may be termed plant efficiency and productivity, which includes, of course, the employees who operate the plant.

Because the phrase "efficiency and productivity" of labor is so often, but so loosely used, I quote a definition of these terms published by the Bureau of Labor Statistics of the United States Department of Labor (Bureau of Labor Statistics Bulletin, No. 616, page 709), as follows:

> " 'Productivity of labor' means work done in a given time; ordinarily it is best expressed as the output per man per hour, although it may be stated as output per man per day, per crew, per week, etc. The 'productivity' of labor must be clearly differentiated from the 'efficiency' of labor, or from any term which is narrowed down to express only the output due to the ability and willing cooperation of the workers themselves.
>
> "In determining productivity, the laborer is simply used as the unit of measurement in expressing the technical progress or decline of an industry over a period of time, regardless of whether the changes in output were due to new machinery, managerial skill, or better work by the employees."

It is evident from this quotation from an authoritative source that the process of dividing total production units by total labor units, of whatever nature, does not produce a result that measures labor efficiency. If it did, then it would be just as logical to hold that a decrease in the averages reflected a decline in labor efficiency and productivity. Should we say, then, because so-called productivity averages are lower in 1938 than they were in 1937 that labor is less efficient than last year? The railways certainly do not take that position and it is reasonably certain that labor itself would not draw that conclusion.

Again, if output per man or per hour increases at a lower rate in the passenger service than in the freight service, is that any reason to raise the wages of freight service men more, or reduce them less, than those of passenger service men?

Sufficient evidence has been introduced in this proceeding to show clearly the extent to which the railways have improved their physical properties in order to increase unit output. This was a progressive, forward step, accelerated perhaps by growing competition from unregulated agencies of transportation and the resulting need for more efficient and economical operation. That need has been further emphasized during the period of depression by a collapse of railroad traffic.

The Department of Labor uses the term "productivity of labor" in the sense of output per unit. When considering whatever results may be shown in the railway industry, consideration must be given to the improved plant of recent years, and to the nine and one-half billions of capital expenditures made by the carriers since 1921, all of which has increased the productive capacity of the plant.

To what extent this program was carried on may be noted from the fact that the railway investment in road and equipment per employee more than doubled between 1920 and 1938, a fact to which Table 17 of Employee's Exhibit No. 56, in this proceeding, called particular attention. This roughly measures the increased facilities made available for labor's use.

In some industries, where an increase in productivity has occurred, one effect of the more favorable operating conditions thus created has been to add to the net profits of such enterprises. This has made possible a more liberal distribution of industry earnings to the several factors of production. Such a condition does not exist in the railway industry. Due to many circumstances, some of which lie outside the control of either employees or management, the roads, despite their increase in efficiency of operation, have experienced serious losses in both gross and net revenue. Instead of serving to increase railway profits, added efficiency in the industry has been essentially a defensive weapon with which the industry has only in a measure withstood the double handicap of decreased earnings and mounting operating costs.

4. The Fallacy of the Employees' Theory of the "Decreased Productivity of Capital."

The same kind of basic fallacy underlies much of the material presented in the case by Mr. George M. Harrison. His first document, Employees' Exhibit No. 56 is entitled "Increasing Debt Burden and Decreasing Output of Invested Dollar." Mr. Harrison presented this material under a title of his own as showing "decreased productivity of the invested dollar." He testified that he had taken much the same factors as were used by the witness Keller in his study of alleged increased employee productivity and had related those factors to the

invested dollar to demonstrate that while the employees' supposed productivity has been increasing, the productivity of the invested dollar has decreased. (Tr. 2446)

Mr. Harrison's Exhibit No. 56 is again based upon admitted statistics and undisputed basic facts, but the difference with regard to the significance of this and other such exhibits lies in the conflicting philosophies as to the meaning of these admitted facts.

The basic fallacy of the employees' contention as drawn from this and similar documents is that effort is made to relate matters such as railway capital investment, outstanding capitalization in stocks and bonds, funded debt or fixed charges, to a factor to which they have no logical relationship, that is, to declining employment in the industry and the decline in the payroll or the pay per employee. This again could only be a measure of unemployment or decreasing employment in the industry and not a measure of the productivity of a dollar of capital investment.

Take Table No. 1 of Employees' Exhibit No. 56, which purports to relate total railway capital outstanding to the total number of employees working on the railroads through a period of years. This, of course, undertakes to arrive at a trend for the total outstanding capital in each year per employee, per hour of service and per dollar of compensation. The table shows an increase in total railway capital outstanding from \$16,855,231,000 in 1920 to \$18,273,439,000 in 1937. So much of the table merely shows a relatively slight increase of outstanding capitalization in line with the showing made by Dr. Parmelee's exhibits. But when it comes to relating this factor to the unrelated factor of declining employment on the railroads, it will be recalled from Carriers' Exhibit No. 41, witness Monroe, that in 1920 the carriers had 2,022,832 employees and paid them total compensation of \$3,681,801,193, whereas in the year 1937 they had only 1,114,663 employees and paid them total compensation of \$1,985,446,718. Obviously, relating the relatively slight increase in total railway capital investment outstanding to this sharp decrease in total employment and total payroll, produces extraordinary results on a comparison of outstanding capitalization with the number of employees, number of hours of service, or number of dollars of compensation. If the total outstanding capitalization had remained absolutely constant, this decrease in employment and in total payroll would have shown the same kind of results.

This table, however, does show something significant in view of the general business conditions which the railway industry has had to face since 1920. In column 4 it is shown that in 1920 it took \$8,332 of

capital outstanding to provide one railroad worker with a job, whereas in 1937 it took \$16,388 to provide one job.

Table 2 of Employees' Exhibit No. 56 undertakes to relate the relatively slightly increased outstanding railway capital to two other declining factors, 1000 revenue freight ton miles, and dollars of operating revenue. This merely shows that revenue freight ton miles have diminished and that dollars of operating revenue have diminished. It would be about as cogent to relate these two factors to the trend of national income or to the trend of population.

In the same way, Table No. 3 of the same exhibit undertakes to relate the relatively slightly increased trend of railway funded debt to the three steadily declining factors of number of employees, hours of service and dollars of compensation paid. One could relate these three declining factors to a fixed measure, say, an even ten billion dollars over the period of years, and still practically the same results would be shown. In either case, the whole significance of the showing is merely to show that employment has decreased, total hours of service have decreased, and total payroll has decreased.

The chart which follows Table No. 3, showing piles of dollars in respective years, is headed "Funded Debt Per Employee." Of course, the psychological effort of the chart is to lead to the impression that each employee has to carry in each year that weight or load of dollars on his back. The true significance of the chart is merely that railway employment has strikingly fallen off, while railway funded debt has increased only slightly.

The same basic fallacy is illustrated by Table No. 5 of Employees' Exhibit No. 56, which undertakes to relate interest accrued on funded and unfunded debt to these steadily declining factors of total employment, total hours of service and total dollars of payroll. The table in this way undertakes to show what is termed "interest accrued on funded and unfunded debt per employee" as having risen from \$265 to \$508 between 1920 and 1936. Mr. Harrison described this in picturesque metaphors and as his metaphors progressed they become more picturesque. He first said that these amounts represent the increasing amounts of funded and unfunded debt which each employee had to pay. But then with a progression of metaphors, he referred to it as a "pound of flesh," with the evident implication that the proportion per employee of the funded and unfunded debt of the railways is the taking out of the back of each employee of a pound of flesh. (Tr. 2454)

It is obvious, we think, that this table shows no increasing burden on a railroad employee and no pound of flesh taken out of his body. All it shows is that while funded and unfunded debt of the railroads has

remained almost constant over a period of 17 years, total employment on the railroads and total payroll have declined, and the reason they have declined, obviously, is not because the railroads have a fixed funded debt, but because employment has fallen off.

Without undertaking to analyze all of the tables of this exhibit, it is clear that they are all based on the same fallacy. Table No. 11 purports to show an increasing burden on each employee by relating accrued interest and dividends declared to the declining trends of employment, hours of service and payroll. This is only a showing that employment has declined. Table No. 12 undertakes to relate total or accrued interest and dividends declared to other declining factors, dollars of operating revenue, dollars of operating expenses, and freight ton miles. Again, the true showing is not that any increased burden has been placed upon the employees, but that due to declining business, revenues and expenses have declined.

The same thing is shown by Table No. 14. It undertakes to relate a slightly increasing trend in total amount of fixed charges to the steadily declining factors of employment, total hours of service and total payroll. From this showing, Mr. Harrison drew the picturesque conclusion that it showed a steadily increasing "obligation of each railway employee with reference to fixed charges." (Tr. 2460) We submit that the table shows no such thing. All it shows is that while total fixed charges have remained relatively constant, employment has gone down.

Again, Table No. 17 is based on the same assumption which we think is a fallacy. It shows the trend of total investment in road and equipment, from 19 billion odd in 1920 to 24 billion odd in 1936. The purpose of the table then is to relate this increasing factor of total investment to the steadily decreasing factors of employment and compensation. What it shows is a relative decline in total employment with reducing business and revenues. But it does make another showing. Column 4 of the exhibit shows (and the reason, of course, is declining business and declining prosperity of the railroads, coupled with the increased capital expenditures for improved machinery and plant) that whereas it took $9,562 of total capital investment in 1920 to provide one railroad employee with a job, in 1936 it took $23,433 of capital investment to provide one employee with a job.

The same comment can be made as to Employees' Exhibit No. 57. Since fixed charges have remained relatively constant and employment has fallen off rather steadily, a relation of the two naturally shows contrary trends.

Another picturesque exhibit is Employees' Exhibit No. 58, the picturesque feature lying more in the title than in anything else. It is entitled "Wealth Production per Employee." This exhibit takes the

items of payroll chargeable to operations, operating expenses other than wages, taxes, surplus for interest, dividends, etc., adding them, and relates their totals to a declining total of employment on the railroads. From this exhibit, the witness drew the surprising deduction that it showed an increase from $3,054.18 in 1920 to $3,736.13 in 1937 as the total "increased production per worker." And as to this theoretical increased production per worker, Mr. Harrison testified that "it went to somebody else besides us." (Tr. 2472) This exhibit merely reflects the increased efficiency of the plant and the decline in employment.

In connection with Employees' Exhibit No. 64, Mr. Harrison performed another ingenious and agile piece of reasoning. By comparing total investment in railway property used in transportation service over a period of years with declining total revenue freight ton miles and declining revenue passenger miles, to arrive at a percentage relationship, and by applying that percentage relationship to the total investment, he undertook to re-compute that part of the total investment for each of the years which was used in the service of the public. Then re-computing a rate of return on so-called used investment, as compared with total investment, he plotted a new trend line.

One thesis drawn from this exhibit by the witness was that a large share of the railroad plant is idle. Everyone knows that as business falls off an increasing portion of the railroad plant is thereby rendered idle, although everyone also knows that the railroads must maintain themselves in a position to perform maximum service when business improves. But the further thesis drawn from this exhibit by the witness was that it is "just as immoral, the way I view the picture, to demand a return on idle capital as it would be for a worker who is out here loafing, to demand that he be paid his wages." (Tr. 2485)

This is one of the employees' favorite themes, that it is just as wrong to pay a return on idle dollars, that is, on that part of total railway investment which may be unused at a particular time on account of decreased business, as it would be for the employees to demand pay when they are not employed. The striking thing about this contention is that it squarely conflicts with another of the favorite themes of labor, to wit: that labor is not a commodity. Of course, we do not contend that labor should be treated as a commodity. However, this peculiar analogy drawn by the employees between so-called idle dollars and so-called idle men is an analogy which itself treats labor as a commodity. Of course, the true difference between the so-called idle dollars, or idle plant and equipment, and idle men is a question of title. Railroads own their plant and equipment. It represents investment. The railroads do not own their employees. Under a system of slavery, of

course, an owner supports his slaves when they are idle as well as when they work, because they are his property and, as such, he must take care of them, but this is utterly foreign to a system of freedom. There is no sound analogy between the idle free employee, who can go into other work and earn a living otherwise, and idle locomotives, cars and other property or equipment of a railroad which are owned by the railroad, and which cannot go into other employment, and which must be kept in order to meet increased demands when business improves.

Another fallacy involved in Employees' Exhibit No. 64 is that it assumes that an exactly proportionate part of railway investment is put out of use in the service of the public proportionate to a decline in total revenue freight ton miles and revenue passenger miles.

There may be some such relationship in the case of freight cars. Relatively, this would be much less true in the case of passenger train equipment, because the passenger trains have to run whether there are few or many passengers. But, with respect to the major portion of the invested plant, right of way, roadbed and track, signal equipment, automatic train control and other fixed equipment, depots, terminals and station houses, etc., there is no cessation of using this property in the service of the public when business declines. It all continues to be used, as Mr. Harrison admitted on cross examination, and the only point he could make was that it wears out much less rapidly under light traffic than under heavy traffic.

Again, that no significant showing is made by Employees' Exhibit No. 64 to support the present high wage level is shown by the fact that, even granting the erroneous assumptions upon which the exhibit is based, and recomputing the rate of return according to the formula illustrated in the exhibit, the rate of return, even on that basis, has been pitifully inadequate. On this basis, the rate of return for the year ended June 30, 1938, was only 2 per cent. We do not agree at all with Mr. Harrison's theory for recomputing rate of return on a reduced investment proportionate to decline in traffic. But, even on his theory, the return is wholly inadequate. (Tr. 3106-3107)

Thus we submit that the same basic fallacy runs through both these major doctrines of the employees, the doctrine of so-called increased productivity of labor, and the doctrine of so-called diminished productivity of capital. Both doctrines are based upon a relating to total employment and total payroll of factors and elements which do not have logical relation thereto. Both doctrines, when properly analyzed, merely reflect decreased total employment on the railroads. We submit that there is no sound basis to be found in these two doctrines for the maintenance of the present excessively high wage rates in the railroad industry.

III.

THE CONFLICT OF PHILOSOPHIES AS TO THE PROPER CONSIDERATION TO BE GIVEN TO COST OF LIVING FIGURES.

Here, again, we have no essential dispute as to facts. The testimony of Dr. King and his exhibits showing the trend of the cost of living over a period of years is wholly undisputed. It is based on the only official figures available to reflect the trend of the cost of living. The only conflict, in this connection, again arises not from any dispute as to what the facts are, but only as to the use to be made of those facts and as to the significance to be drawn from them. The facts themselves stand admitted.

The only witness for the employees who has especially dealt with questions concerning costs of living is the witness Kaplan, in his testimony in connection with the so-called Heller Committee Study. He did not undertake at all to challenge the correctness of Dr. King's exhibits regarding the official cost of living index and its trend. What he did was to present an economic philosophy or theory that these admittedly official and reliable cost of living indices ought not to be used or considered in a wage fixation case because, as he argued, the cost of living indices merely reflect changes in the general price level, in the price of goods and commodities, and do not reflect or measure the growing or changing wants of the working man. He undertook to present, as his conception of a proper approach in a wage case, the results of the so-called Heller Committee Study, which is not a study of costs of living at all but is merely a hypothetical and theoretical creation of a supposed health and decency budget and a revision of that budget for a given year, not to reflect increased prices or increased costs of living at all, but merely to reflect increased wants of the wage earner.

We shall come back in a moment to the Heller Committee Study and to Mr. Kaplan's testimony regarding it. But for the moment let us consider the fact that historically a cost of living index has always been given consideration in wage fixation controversies in the measuring of the purchasing power of money, or real wages, since it is the purchasing power of the worker's money income which determines the extent to which he can have the comforts and luxuries enjoyed by other classes and his capacity intelligently and progressively to improve his condition.

In our historical outline in the opening part of this brief, we have shown that every general wage fixation in the railroad industry, whether general increase or general decrease, has followed the fluctuations in the cost of living index as result follows cause. Let us consider this now somewhat more in detail.

1. War Increases Based on Rising Cost of Living.

The large increases in railway wages of 1918, effected by General Order No. 27 of the Director General, were largely based upon the rising index of the cost of living during the years prior to 1918 shown on Carriers' Exhibit No. 50. It will be recalled that General Order No. 27, dated May 25, 1918, effected these increases and put into effect, with some minor variations, the broad increases recommended by the Lane Commission in its report of April 30, 1918. The text of General Order No. 27 is very brief and makes no statement as to the ground upon which the 1918 increases were ordered, except that it refers to the report of the Railroad Wage Commission (Lane Commission) and acknowledges "the patriotic service so unselfishly rendered" by that Commission.

It results that we must look to the Lane Commission Report to see the essential grounds upon which the 1918 federal control increases were based. In that report it was said, on page 13:

> "Should there be any increase in wages to these men in the railroad service? The railroads themselves have for the past two years been answering this question by yielding, some with a wise prevision, and others too slowly for their own good, to the requests of their employees. It took neither tables nor charts nor briefs to make evident that, if the roads were to hold those men they had, concession must be made to the imperious demand of rising prices for the staples of living."

Again, on pages 15 and 16, this Report stated:

> "We have had a most exhaustive study made of the cost of living, today, as contrasted with the cost of living in the latter part of 1915, when by the reaction of the European war the American people first felt keenly the increase in the burdens of life and the need for higher wages. This study has been made without reference, primarily, to those quite thorough investigations which have been carried on by the Department of Labor, other governmental, and many private agencies. And to our minds it conclusively establishes two things, (1) that the cost of living has increased disproportionately among those of small incomes, and (2) that there is a point up to which it is essential that the full increased cost shall be allowed as a wage increase, while from this point on the increase may be gradually diminished. (See Appendix II.)
>
> "This study of the cost of living was not made from paper statistics exclusively, by the gathering of prices and comparisons of theoretical budgets. It was in no inconsiderable part an actual study from life, one of the most interesting and valuable groups of figures having been gathered by the newspapers of the country, by interviews with those of the working class, and the inspection of their simple books of accounts. Roughly, it may be said that the man who received $85 a month on January 1, 1916, now needs 40 per cent additional to his wage to give him the same living that he had then. Below that wage a larger percentage must be allowed, because the opportunity for substitution and other methods of thrift decline almost to a vanishing point, while above that wage a growing proportion of the increase will go to those things essential to cultured life, but non-essential to actual living.
>
> "In fairness, therefore, a sufficient increase should be given to maintain that standard of living which had obtained in the pre-war period, when, confessedly, prices and wages were both low. And upon those who can best afford to sacrifice should be cast the greater burden."

There was attached to the Lane Commission Report as Appendix I a special study made of French and British railroad wage adjustments during the war and this study clearly shows that increases in wage rates for railway workers in both France and England during the war were based squarely on the increased costs of living and, indeed, that the sole ground upon which railway employees in those countries demanded increased wages was the rise in the cost of living.

The first part of this appendix report covers the railway wage adjustments in Great Britain, and on page 56 of the report, as contained in the Lane Commission report, it is stated:

> "According to available information, the sole ground upon which the employees have demanded increased compensation has been the rise in the cost of living."

After treating the first increase granted British railway labor, in the form of an average bonus, the discussion of the second increase starts with the statement (p. 57) that, "the continued rise in commodity prices soon made the employees feel that this bonus was inadequate, and the unions again asked that a flat increase of five shillings per week be given to all employees." A second bonus increase was granted pursuant to that demand.

In its discussion of the third increase in Great Britain (p. 57), this report starts with the statement:

> "But the cost of living continued to advance; and in August, 1916, the unions demanded an additional increase of 10s. per week for all employes, this increase being asked as a wage increase rather than a bonus."

The report shows that a compromise third increase was granted in answer to this demand.

On page 60 of the British report, it is stated:

> "So far as is known, the continued rise in the cost of living has been the sole ground upon which the employees have based

their demands for wage advances; it is certain that if other reasons have been given they have been wholly subordinate. The figures which the employees have taken as measurements of the rise in the cost of living have generally been those published monthly in the 'Labour Gazette', an official publication issued by the Board of Trade up to July, 1917, and by the Ministry of Labor since that date. These figures show the percentage increases in the retail prices of food at the beginning of each month over the corresponding prices in July, 1914, these percentage increases being shown for the country as a whole, and for large towns and small towns separately. (See Table 1 attached). The figures are stated to be based upon over 500 returns of predominant prices, collected from retailers having a working-class trade, relating to the principal articles of food in every town with over 50,000 inhabitants; in about 200 towns with populations of from 10,000 to 50,000; and in about 250 representative smaller places. The articles included are beef and mutton (British and imported), bacon, fish, flour, bread, tea, sugar (granulated), milk, butter (fresh and salt), cheese, margarine, eggs (fresh) and potatoes. In arriving at the general percentage increases over July, 1914, the 'Labour Gazette' states that the prices of each article are combined into a single figure for that article and that then 'the several articles are weighted in accordance with the proportionate expenditure on them in pre-war family budgets, no allowance being made for the considerable economies which result from changes in dietary which have been widely effected since the beginning of the war,' these changes in dietary being due to the rise in prices and, in certain cases, to the difficulty or impossibility of obtaining some articles at any price. These percentage increases, thus compiled, have been widely disseminated by the press; railwaymen, like other workers, are familiar with them and have generally accepted them as indicating the rise in the cost of living."

From this it will be seen that the British railway employees obtained their wartime increases on the basis of exactly the same kind of cost of living figures and indices as those upon which we rely in this case.

In the part of the appendix report covering France, on pages 75 to 79, there is a very detailed discussion of the very same character of cost of living indices in France and it shows that railway wage increases in France were based on the increased cost of living.

Appendix III to the Lane Commission Report is a very full study of the cost of living during 1917 and 1918 compared to the pre-war period. It is divided into two parts. Part I covers relative price changes, using United States Bureau of Labor Statistics indices. Part II deals with family budgets and shows that the special study made for the Lane Commission supplemented the Department of Labor cost of living indices by an actual study of family budgets, giving actual

incomes and expenses in detail, secured by the Commission through newspaper editors in selected cities in different parts of the country. These were not hypothetical family budgets established to meet an ideal of what a workman's family should have, to attain a certain standard of living, but were actual budgets based upon study of the expenditures of 265 actual families.

Thus it is clear that the 1918 wage increases in America were fundamentally based upon the Department of Labor's cost indices, supplemented by additional studies of actual family budgets. The rise in the cost of living index from 58.8 in 1915 to 87.2 in 1918, as shown by Carriers' Exhibit No. 50, was the fundamental ground upon which the 1918 wage increases were predicated.

2. Decision No. 2 Based on Continued Rise in Cost of Living.

We come then to the 1920 increases made effective by Railroad Labor Board Decision No. 2. Looking again at Carriers' Exhibit No. 50, it will be seen that the cost of living index rose steadily and in a straight line from 87.2 in 1918, the date of General Order No. 27, to 116.2 in 1920, at which time Labor Board Decision No. 2 went into effect. And Decision No. 2 itself shows conclusively that the fundamental ground upon which the 1920 increases were predicated was this continued rise in the cost of living since General Order No. 27.

On page 15 of Decision No. 2, as contained in the official publication of the decisions of the United States Railroad Labor Board, it was said:

> "General Order No. 27 was based upon the cost of living at the time it was formulated. These costs, however, continued to rise through the years 1918 and 1919. In January, 1919, the shop crafts and thereafter other railroad employees presented requests for further wage increases aggregating some $800,000,000 per annum. The Director General transmitted these requests to the President, who, on August 25, 1919, urged the employees to refrain from pressing them pending a better opportunity to estimate the permanence of high living costs."

The decision then goes on to point out that these costs of living continued to rise and, a reasonable time for the appearance of a trend toward lower living costs having elapsed, the organizations of railroad employees renewed their requests for wage increases to the Director General, who declined to act, and was supported by the President in so doing in view of the imminent termination of federal control. The Board then pointed out the resulting enactment of the Transportation Act and the creation of the Railroad Labor Board. The decision then continues on page 15:

"This long delay and succession of disappointments, coupled with the pressure of a further rise in living costs, produced deep and not unreasonable dissatisfaction on the part of railroad employees, who felt themselves called on to make sacrifices, as they believed, far beyond those of any other class."

The Board then reviewed the seven criteria set up by the Transportation Act and stated that it had given consideration to each of these criteria and, "among other relevant circumstances," that it had considered "the effect the action of this Board may have on other wages and industries, on production generally, the relation of railroad wages to the aggregate of transportation costs and requirements for betterments, together with the burden on the entire people of railroad transportation charges." (*Ibid.*, p. 16.) It will be noted that the second of the criteria set up by the Transportation Act was, "the relation between wages and the cost of living."

In connection with that criterion, the Board said, on page 17:

"It is clear that the cost of living in the United States has increased approximately 100 per cent since 1914. In many instances the increases to employees herein fixed, together with prior increase granted since 1914, exceed this figure. The cost of living and wages paid for similar kinds of work in other industries, however, differ as between different parts of the country. Yet standardization of pay for railroad employees has proceeded so far and possesses such advantages that it was deemed inexpedient and impracticable to establish new variations based on these varying conditions."

In connection with this statement by the Labor Board that the cost of living in the United States had increased approximately 100 per cent between 1914 and 1920, notice its exact confirmation in the showing of Carriers' Exhibit No. 50 in this case, which shows the cost of living index as 58.2 in 1914 and 116.2 in 1920.

Thus it will be seen that the fundamental basis of Decision No. 2 was the rise in the Bureau of Labor Statistics cost of living index upon which we rely in this case.

3. Decision No. 147 Based Upon Decline in Cost of Living.

By the same token, Decision No. 147, June 1, 1921, which effected the 1921 wage decreases, was based on the direct and sharp decline in the cost of living index from 1920 to 1921, which fell, as shown by Carriers' Exhibit No. 50, from 116.2 in 1920 to 103.6 in 1921. In Decision No. 147, outlining the history of the controversy and referring to Decision No. 2, the Labor Board said (*Ibid.*, pp. 136-137):

"That decision was rendered at a period of inflation, rising prices and high costs of living. Since then changes, and in some respects very decided changes, have taken place in business, industrial, and financial conditions in the United States, and in a varying measure have affected all industries and the entire public.

"We now find ourselves in a period of readjustment to which all interests sooner or later must conform.

"Following the raise in wages granted by this Board in Decision No. 2, and to some extent based on that, the Interstate Commerce Commission granted an increase of rates to the carriers which was put in force, but after this there came the inevitable pause in the rising tide of prices and business, followed by the like inevitable recession, and in some lines a disastrous fall in prices, and the resulting cutting down of production. This has affected all lines of industrial life all over the United States and produced conditions which have to be met and in whose burdens all have to share."

In its findings made in Decision No. 147, the Board first found that since the rendition of its Decision No. 2 there had been a decrease in the cost of living. It then found that the scale of wages for similar kinds of work in other industries had in general been decreased. (*Ibid.*, p. 139.) And the Board concluded (*Ibid.*, pp. 139-140):

"The Board believes that based on these elements shown, *i. e.*, the decreased costs of living and the general decrease in the scale of wages in other industries, that the decreases herein fixed are justified and required."

4. The 1922 Decreases Similarly Based on Decline in Cost of Living.

By reference to Carriers' Exhibit No. 50, it will be seen that the cost of living continued to decline, from 103.6 in 1921 to 97.2 in 1922, and this was the fundamental basis for the further relatively slight wage decreases of 1922, effected by Decisions Nos. 1028, 1036 and 1074.

In Decision No. 1028, making effective the 1922 decreases for maintenance of way forces, the Board set out (*Ibid.*, p. 390) a study reviewing average hourly rates at various dates, per cent of increases in average hourly rates from December, 1917, percentage relationships of the 1921 cost of living to the cost of living for 1917, and the per cent of increase in purchasing power of earnings from 1917 to the date of the decision, showing such increase in real wages, in view of the trend of the cost of living indices, of 44.5 per cent. Below that table the Board stated:

"Although average hourly earnings of this class of employees are below the earnings prior to Decision No. 2 by 5 cents per hour,

their value is 3.6 per cent greater, due to the decrease in cost of living. The cost-of-living figures set out in the foregoing tables have been compiled from the reports of the United States Departmen of Labor and are the latest date for which such data are available."

Up to the time of this decision, the employees in previous wage litigations had relied upon the increased cost of living indices, but here, for the first time, in view of the decreases already effected by Decision No. 147, and reflecting their disappointment therewith, the employees attacked the use of the cost of living indices, which were now falling, and the basis of their attack was reflected in the dissenting opinion of the labor members of the Labor Board filed in connection with Decision No. 1028, the first of a series of dissenting opinions.

Decision No. 1036, which effected the 1922 decreases as to shop crafts, similarly was based on this declining trend in the cost of living. On pages 428 and 429 of that decision the Board said:

> "Based upon the evidence before the Labor Board, the statistical department of the board has made a study of the comparative purchasing power of the wage herein fixed for certain of the shop crafts and the purchasing power of the wage paid such employees on the railroads in December, 1917, immediately prior to Government control of the carriers; in January, 1920, just prior to the termination of Federal control; on May 1, 1920, the effective date of Decision No. 2; on July 1, 1921, the effective date of Decision No. 147; and in March, 1922."

There follows in the decision a table similar to that contained in Decision No. 1028, which shows the purchasing power of earnings of machinists, as changed by Decision No. 1036, to have been 18.8 per cent greater than as of December, 1917, and the purchasing power of earnings of carmen under Decision No. 1036 to have been 45.7 per cent greater than as of December, 1917. Following that table, the decision stated (*Ibid.*, p. 429):

> "Although average hourly earnings of machinists are below the earnings after Decision No. 2 was applied by 15 cents per hour, their value is 6.9 per cent greater due to the decrease in the cost of living.
>
> "The average hourly earnings of carmen are below the earnings after Decision No. 2 was applied by 16.6 cents per hour, but their value is 3.2 per cent greater for the same reason.
>
> "The cost-of-living figures set out in the foregoing tables have been compiled from the reports of the United States Department of Labor and are for the latest date for which such data are available."

Thus it is clear that this decision was based squarely on the decline in the cost of living index and the resulting increased purchasing power of earnings. Again, a lengthy dissent by the labor members of the Board reflected the attack by the employees on the use of cost of living indices and reflected their disappointment with such use in a period of descending costs of living.

The same thing is true as to Decision No. 1074, the last of the 1922 series of wage reduction decisions, reducing wages of signal department employees.

On page 495 of that decision the same kind of a table was set forth showing the percentage increases in purchasing power of wages fixed by that decision as compared with wages fixed by Decision No. 2, 12.3 per cent increase as to clerks, 7.8 per cent increase as to signalmen, etc., and 7.9 per cent increase as to stationary firemen and engine room oilers. It showed a decline of 1.4 per cent as to common labor, station and stores. Following that table, the Board said (*Ibid.*, pp. 495-496):

> "The foregoing table prepared by the statistical force of the Labor Board is based on the cost-of-living figures issued by the United States Department of Labor.
>
> "These figures show that applying the wages fixed by this decision to the present cost of living, the purchasing power of the hourly wage of the respective classes here named has increased over the purchasing power of the hourly wage of December, 1917 (prior to Federal control), as follows:

	Per cent.
Clerks	44.7
Common labor around stations, etc.	51.5
Signalmen (maintainers and assistants)	67.2
Stationary firemen and engine-room oilers	94.1

> "The table also shows that with one slight exception the purchasing power of the hourly wage of each class of these employees is greater under the present decision than it was under Decision No. 2 which granted the 22 per cent increase."

In Decision No. 1074, the Labor Board gave careful consideration to elaborate testimony introduced bearing upon family budgets and standards of living and asserted that existing standards would not be lowered by the decision as shown by the statistics above referred to. The majority opinion and the dissenting opinion in that decision disclosed that the employees made much more extravagant claims with regard to family budgets and standards of living than they had made in the previous cases. The dissenting opinion in the prior decision, Decision No. 1036, shows that the employees in that case not only attacked the cost of living figures but introduced evidence as to hypothetical budgets for families prepared by a Professor Jaffa. Based on his

hypothetical family budgets, the employees in the case resulting in Decision No. 1036, as is shown from page 443 of the dissent in that case, presented hypothetical cost of living budgets of $2,600 a year for a family of five. In their case in connection with Decision No. 1074, as is shown on page 496 of the Board's decision, they presented such hypothetical budgets in the increased amount of $2,636.97. As to their contention the Board said (p. 496):

"This matter of living standards constitutes an interesting and important study, but much that is said on the subject is highly theoretical and of but little value.

"When the Railway Employees' Department presents figures to show that the sum of $2,636.97 is necessary for the minimum comfort budget of the average family, it has propounded an economic impossibility.

"It is stated upon authority that the total income of the people of the United States is now but little more than $40,000,000,000. If the 25,000,000 families of this country were spending for living costs the sum of $2,600 each, it would total $65,000,000,000, which would be $25,000,000,000 in excess of the country's total income.

"Of course, living costs cannot be standardized any more than men can be standardized. One man will consume his income and find himself continually in debt, while another man with the same income and under identical conditions will live in equal comfort and accumulate savings.

"In this connection it can hardly be considered a digression or a gratuitous preachment to say that one of the principal troubles with the people of this country today is the abandonment of the old-fashioned ideas of thrift and economy and the indulgence in wastefulness and extravagance. These loose habits of living were acquired during the inflated period engendered by the war and, like many ills of similar origin, are slow to depart. Increased expenses do not always mean a higher standard of living, nor do diminished expenses necessarily mean a lower standard of living.

"In the settlement of these questions, it is the profound desire of the Labor Board to do justice to the parties directly concerned, placing the human and social consideration above the purely economic, and, finally, to establish wages and conditions that will largely meet the hopes and aspirations of the employees, that will prove satisfactory to the carriers, and that will impose no unnecessary burdens on the public. This is not a Utopian conception in America."

5. The Changed Labor Theory Developed in the 1922 Dissents.

The lengthy and often vitriolic dissenting opinion in connection with this decision, written by two labor members of the Board, Mr. A. O. Wharton and Mr. Albert Phillips, made a bitter assault on this sound reasoning of the majority of the Board. It asserted largely the doctrines which are relied upon by the employees in the present case

and which are indulged in the testimony of the witness Kaplan regarding the use of hypothetical, ideal, or Utopian family budgets, as against cost of living indices. It contained an elaborate discussion of social effects of low wages and of human factors in wage decisions, elaborate criticisms of the majority decision, and discussions of the subject of "labor as a commodity." This dissent went so far as to make this suggestion to the employees (p. 530):

"Employees will also take this as a permission to go out and get such wages as they can command. If they feel that they can command higher wages by withholding their services, either separately or in numbers, that will not be a strike against the order of the board, it will merely be the carrying out of the board's suggestion as to the method of wage adjustment about to come."

This dissent was so intemperate in its terms as to call forth an additional supporting opinion by the majority of the Board (*Ibid.*, pp. 532 to 538). In that supporting opinion the majority made this reply to the above-quoted suggestion to the employees and to other similar suggestions in the dissenting opinion, characterized by the supporting opinion as "incendiarism":

"There is one feature of the dissenting argument, however, which is so unusual that it should not be passed over without notice, and that is the portion wherein the two dissenting members advised the employees to strike against the decision of the Board.

"It is quite natural for the representatives of labor on the Board to resist all reductions in wages. This course is in harmony with the policy of the organizations and it was pursued in connection with the reductions in the year 1921 as well as those of the present year.

"It is something new, however, for labor members of the Board to issue incendiary arguments to employees in favor of striking against a decision of the Board. The giving of advice of this kind has heretofore been left to outsiders, who were not under the official obligations imposed by the Transportation Act, the main purpose of which is to prevent railway strikes and protect the public from their dire effects."

6. Universal Use of Cost of Living Indices in Other Industries.

Not only have the fluctuations in the cost of living indices been given this uniform recognition and use in railway wage adjustments, but they have been similarly and universally used in other wage adjustment controversies and arbitrations in other industries. Without going into detail as to this, we cite Bulletin No. 369 of the United States Bureau of Labor Statistics dated May 25, 1925, and entitled "The Use of Cost-of-Living Figures in Wage Adjustments." This is a very full and elaborate study covering all industries. It further includes a

very elaborate study, pp. 65 to 93, of the use of cost of living figures in American railway wage adjustments. We further cite the article by Ethelbert Stewart, United States Commissioner of Labor Statistics, entitled "Use of Cost-of-Living Figures in Wage Adjustments," appearing in volume 26, No. 3, March, 1928, Monthly Labor Review of the United States Bureau of Labor Statistics. This supplementary treatise likewise covers various industries, but on page 3 it contains a special discussion of railroad arbitrations under the Railway Labor Act of 1926. In this discussion it is said:

> "The Railroad Labor Board, during its life of six years from 1920 to 1926, used the cost-of-living indexes as computed by the United States Bureau of Labor Statistics in all its wage decisions, the law specifically providing that it should give consideration, among other factors, to 'the relation between wages and the cost of living.'
>
> "The mediation and arbitration boards established under the new railway labor act of 1926 have no definite rules of procedure established by law, but a review of the hearings and awards in all of the numerous arbitration cases held under the act shows that data regarding changes in the cost of living have been given constant consideration by the parties concerned. Such figures were used in the arbitrations between the Brotherhood of Locomotive Firemen and Enginemen and the southwestern and western railroads; between the Brotherhood of Railway and Steamship Clerks and the Chicago & North Western Railroad, the American Express Co., the Boston & Maine Railroad, the New York Central Railroad, and the Southern Railway Co.; between the Brotherhood of Railroad Signalmen and the Southern Pacific Railway Co.; between the organizations of conductors and trainmen and the western railroads; between the Brotherhood of Railway Maintenance of Way men and the Louisville & Nashville Railroad; and in other cases. The cases cited involved more than 200,000 men. In a great many other instances, also, voluntary settlements were made between the men and the carriers on the basis of awards made in the above cases."

7. The Heller Committee Study.

Returning now to Employees' Exhibit No. 5, the hypothetical Heller Committee budgets, it will be observed that this exhibit and the testimony of the witness Kaplan thereon is the only testimony offered to attempt in any way to challenge our showing based upon the cost of living and the trend of purchasing power of the earnings of railway employees. We do not feel it essential to comment on the Heller Committee Studies in much detail. On their face, on the attached description apparently prepared by the University of California, rather than by the Heller Committee, and on the testimony of the witness Kaplan

regarding the study, these budgets were not based on any study of any particular families or of the expenditures of workingmen's families. They are purely hypothetical and reflect merely the personal views of the Heller Committee as to what is a desirable health and comfort budget. It is significant that the description of the study itself states, on page 2 of the exhibit:

> "In this dilemma, the Heller Committee budgets necessarily represent a compromise between what ought to be and what is."

It is further significant that the Committee itself, apparently, or the University of California, it is not clear which, in this descriptive statement, on page 3 of Employees' Exhibit No. 5, states, after referring to the fact that the two budgets contained changed items, the 1936 budget containing such new items as radios, automobiles, and permanent waves:

> "It is difficult to add such new items to a standard budget without impairing its value as an index."

Looking at the two hypothetical budgets on the first sheet of the exhibit, it is significant that the 1936 budget not only included $288.40 for automobiles, whereas nothing was included for that item in the 1929 budget, but that the 1936 budget includes $21 for union dues and $24.72 for incidentals, when nothing for either of these items was included in the 1929 budget.

To one not impelled by a preconceived thesis, it would seem most extraordinary that the Heller Committee should have assumed that automobiles were not used nor union dues paid, nor incidentals spent, in 1929 by a workingman's family, although they were in 1936. But the basis of these hypothetical budgets is such that they admittedly have no bearing whatever on the costs of living, or on the trend of the purchasing power of earnings. They do not represent a fixed basket of goods or commodities, like the budgets which the Bureau of Labor Statistics has used for the comparing of trends. The Heller Committee not only pulled their budget items out of the air, without any study of actual expenditures of working families, but they made up their varying basketfuls of goods by the use of different items in 1929 and in 1936, and changed the weightings of the various items. It results that these Heller Committee budgets have no bearing whatsoever on the cost of living, but merely illustrate a hypothetical conception of how wants and desires of a workingman's family may change from year to year.

On the same basis, anyone can prepare his own ideal of a health and comfort budget and can run its total up to $4,000, $5,000, or even

$10,000 a year, and no sound objection could be made to any of the items included. Of course, the basic fallacy of any such hypothetical budget is, as pointed out by the Labor Board in its Decision No. 147, that such a budget is an economic impossibility, and the total income of the United States could not possibly be divided up among the families of the United States so as to average anywhere within thousands of dollars of such a budget.

The Heller Committee Study merely comes down to proving that spending more money will buy more goods and will satisfy more wants.

A rather remarkable doctrine was introduced into the case by Mr. Kaplan on his cross-examination. He testified that it is common knowledge that wage earners spend all they get. (Tr. 1901) The theory seems to be that the wage earner's earnings should be increased, because, if they are increased, he spends all he makes and thereby, by spending an increased amount, he has a higher standard of living. This is a queer confusion of cause and effect. Ordinarily standards of living are used to produce wage adjustments, but here the wage adjustment is sought to be justified as a cause of an increased standard of living.

Mr. Kaplan had to admit, however, that a substantial decrease in per capita national income over a period of years would be indicative that standards of living for the citizens as a whole had not improved. (Tr. 1902) When presented with a comparison of the study made by the National Resources Committee, Mr. Kaplan had to admit that under the standards laid down by the Heller Committee, only 14 per cent of all families in the United States are living up to the Heller Committee so-called standard of health and decency. (Tr. 1904)

IV.

THE CONFLICT OF PHILOSOPHIES AS TO THE MEASURING OF A "FAIR LIVING WAGE." ARE HOURLY RATES OF PAY THE SIGNIFICANT FACTORS, OR ARE WEEKLY, MONTHLY AND ANNUAL EARNINGS THE SIGNIFICANT FACTORS?

The basic philosophy of the employees here and in all wage adjustment controversies is that they are entitled to a fair living wage for their work. There is no dispute by the carriers as to that theory. All of the carrier executives testified in effect that they believe not only in paying a fair living wage, but in paying as high levels of wages to railway workers as the industry can reasonably bear and as measured, of course, by the abilities and work of the employees.

But one of the basic conflicts in the case arises out of the application sought to be given to the doctrine of a fair living wage. While asserting that doctrine, the employees undertake to repudiate weekly, monthly or annual earnings as a proper measure and pin their case entirely to the question of hourly rates of pay.

Here, again, there is no really substantial dispute about the facts. On the basis of weekly, monthly and annual earnings railway employees are now far above the averages of workers in outside industries, both manufacturing and non-manufacturing. They are also, on this basis, far above wage workers in general and the average for all citizens of the United States. Not only is this so, but railway employees, on the basis of weekly, monthly and annual earnings, have enjoyed a substantial improvement, both in actual money earnings and in real wages or earnings, not only since 1929 but throughout a long period of years. No evidence is introduced by the employees to challenge or contradict this showing which is conclusively made by the carriers' evidence.

However, the employees do show, through the testimony and exhibits of the witness Kaplan, that, in certain outside industries, hourly rates of pay are higher than they are in the railroad industry. The carriers do not dispute this showing. But we do point out that these higher hourly rates in certain outside industries are largely reflective of conditions in highly urbanized industrial centers, whereas railway workers work throughout the country. We further point out that in most of these industries in which higher hourly rates of pay are paid, the total payroll is a relatively much smaller part of operating expenses than in the case of the railroads. In the case of certain of these outside industries, such as petroleum, labor costs are such an unsubstantial portion of total costs as to be of relatively little importance to the industry.

However, what are the proper conclusions to draw from these substantially undisputed facts and comparisons between railroad employees and outside industries? The theory of the employees seems to be that the hourly rate of pay is the only way to measure the estimate which the industry and its employees place upon the value of work and that hence hourly rates of pay ought to be the controlling factor in comparisons.

However, this theory collides head-on with the employees' theory of the basic right to earn a "fair living wage." As we have previously stated in the brief and as is, we think, conclusively shown by the whole effect of the evidence in the case, hourly rates of pay as such are not significant as bearing upon the question whether a fair living wage is earned.

A worker cannot live on an hourly rate of pay, which is nothing but a contract to pay a given rate for an hour's work. Such an hourly rate cannot be interpreted into terms of a living wage unless the employee secures enough work throughout a week, month and year to make his earnings equal what is necessary for a fair living wage.

We submit, upon all the evidence in the case, that it is the weekly, monthly and annual earnings which are the significant factors bearing upon the question of a living wage. It is only out of these earnings that a wage earner can live or attain any standards of living. Hourly rates of pay do not establish standards of living and are not the significant factors in measuring a living wage.

In view of the conclusive showings in this case as to the high average weekly and annual earnings of railway employees, both in actual money and in real wages or purchasing power, substantially higher than for other industries, substantially higher than for all wage workers including railroads, substantially higher than the average of all citizens of the country as based on the distribution of national income, there can be no question in this case that the employed railway employees not only earn a living wage but have very high relative earnings, and that their earnings have increased disproportionately to all other comparable factors since 1929, rising substantially while all other important factors have been falling.

Much argument is made by the employees as to the question of unemployment in the railroad industry. They contend that this showing as to earnings of the employed railway worker overlooks the fact that many former railway workers are not now employed in the industry. But the conclusive answer to this argument is that former railway workers, now unemployed, have no substantial interest in the maintenance of the present high wage rates of employed railway workers. The only effect of such high rates is to diminish the oppor-

tunity for re-employment of those presently unemployed and to increase the earnings of those actually employed. It is perfectly understandable that employed railway workers desire to maintain their high wage rates, but this desire certainly is not dictated by any altruistic consideration for the unemployed.

The only tendency which a reasonable wage rate reduction would have to affect the unemployed is the tendency which it would have, as shown by the testimony of all the railway executives, to increase their opportunity for re-employment.

Unquestionably, restoration of wages to a level which is in balance with the ability of the industry to pay, will accomplish immediate and substantial improvement in the financial condition of the railroads, as was stated by the Splawn Committee Report. This improvement will necessarily increase the opportunity for employment of the unemployed.

The employees argue that they were deluded in 1932 when they accepted a voluntary 10 per cent reduction, in that it was held out to them that if such reduction was made there would be an increase in employment. It is quite true that total employment declined thereafter. This, however, was due to no desire on the part of the railroads not to maintain or increase employment, but was due to the continuance of the business decline. No one knows in figures what the decline in employment would have been if the 10 per cent deduction had not been agreed upon, but it would seem obvious that the decline which actually occurred was much less than it would have been if this voluntary deduction had not been made. The testimony of the railway executives shows this to be the fact. In this connection, we refer again to the quotation from Mr. Charles Donnelly's testimony on page 114 of this brief.

V.

CONFLICTING THEORIES AS TO PROPER APPLICATION OF THE SO-CALLED DOCTRINE OF "ABILITY TO PAY."

Throughout this case the employees, through their counsel, have had much to say about the application of the so-called doctrine of "ability to pay." The interesting thing is that the very argument which is made, asserting the theory that in a case of this character the ability or the inability of the industry to pay should not be given any consideration, is an argument which contains its own answer.

Mr. Holden, in his testimony, put his finger on the true distinction when he said:

> "We cannot go on paying wages on a peak prosperity scale, when our business does not justify it. The empirical theory that 'ability to pay' should not be considered as a factor in wage disputes may be applied with caution to local or isolated situations in peculiar circumstances, but it has no application to a key industry such as the railroads, which cannot be superseded as a system by any other form or forms of transportation." (Tr. 1398)

There have been arbitration cases in which a doctrine has been announced that employees are entitled to a fair, living wage and that they must be paid such fair, living wage regardless of the ability of the industry to pay it. These, as stated by Mr. Holden, have all been cases involving only an isolated or particular plant or an isolated or particular railroad. Essentially, the application of this doctrine in such particular case is merely another way of applying the doctrine of standardization of wages. Particularly is this true in all of the railroad cases in which this doctrine has been announced.

The reason always advanced for the doctrine is that if an arbitration board should take into consideration the inability of this isolated industry or railroad to pay a fair, living wage, this would necessarily result in the destruction of standardization of wages.

In the railroad industry, as the evidence in this case clearly shows, wages for many years have by and large been standardized throughout the United States. The same standard wages are paid on prosperous railroads, on what Mr. George Harrison called "problem railroads," and on railroads in bankruptcy or receivership. For many, many years it has been a cardinal principle of the railway labor unions that the wages must be standardized throughout the industry. And, on cross examination, Mr. George Harrison reiterated this principle and roundly asserted that he would not admit of any principle which would allow lower wages to be paid on a bankrupt railroad than on a prosperous railroad. (Tr. 2748-2749)

As given this application to particular plants or railroads, and as applied to the measuring of a fair, living wage, of course the so-called doctrine that ability of the particular unit of a general industry to pay standard wages should not be considered, has a very proper application. Unless it were so applied in a wage adjustment case, an arbitration, or an emergency board case involving a dispute between a receivership or trusteeship railroad and its employees, then a consideration of the inability of such railroad to pay standard wage scales would result in the destruction of standardization. A lower scale than the standard for the industry would result for the impoverished road.

Every time that counsel for employees in this case has made an argument on the so-called question of "ability to pay," evidently because this is the only reason which has ever been given for the application of such doctrine, counsel have made this very argument, that to consider ability to pay in connection with fixing wages would result in lower wages for an impoverished railroad than for a prosperous railroad.

But, obviously, such doctrine has no possible application in the present case, which is an over-all, national case, involving substantially the entire railroad industry of the United States and substantially all employees. This case proceeds fundamentally, according to the theory of both parties, on a principle of standardization and not on any principle of breaking down standardization. On both sides of the table, we agree that this case must be handled on a broad over-all, national basis, and that all railroads and all employees shall receive like treatment. The case involves not a question as to whether a particular unit of a general industry shall be allowed to depart from, or lower, wages which are standard throughout the industry. What it involves is the broad question as to what the standard shall be for the entire industry. No other issue is before this Board.

The employees would not for a moment agree to any differing treatment being accorded in this case as between prosperous railroads and impoverished or bankrupt railroads. Therefore, while a breakdown of the total of $250,000,000 expected to be saved by the 15 per cent wage reduction, to show how much of the total each carrier would save, might be interesting, it has no relevancy to the national issue in this case, as it has been made by the agreement to handle this dispute on a national basis, regardless of the means or poverty of individual units of the industry.

In such a case, there is not a line of authority anywhere to support the proposition that the ability of an entire key industry to pay or maintain a particular level of wages shall not be given vital consideration, as one of the prime factors in the general business condi-

tion, in the light of which the problem of wage adjustment must be solved.

Counsel have cited, as if it had some application, the case of *Ames v. Union Pac. Ry. Co.* (C. C. Nebr., 1894), 62 Fed. 7. That case has not the slightest application to the present situation.

The *Ames Case* turned entirely on a question of procedure in an equity receivership of a railroad. Federal receivers had been appointed for the Union Pacific. At the time of their appointment the railroad had in effect an agreement fixing rates of pay, rules and working conditions with the organized employees and this agreement had a provision requiring thirty days' notice, before any change. Without giving such notice, the receivers proceeded to revise the agreements, changing rates of pay, rules and working conditions, and, further without notice, submitted to the federal circuit court in Nebraska the revised schedules of rates of pay, rules and working conditions and secured that court's approval of the putting into effect of the changed rules.

The receivers were operating the railroad in various states and they thereafter applied to the federal circuit courts in Wyoming and Colorado to make the same order authorizing the change of the working schedules. Those courts, as shown on page 10 of the opinion in the *Ames Case*, declined to give effect to the order of the circuit court in Nebraska on the ground, and on the sole ground, that the employees had had no notice of the proposed change as required by the existing agreements. Upon this action being taken by the circuit courts in Wyoming and Colorado, the whole question came on again for rehearing before the circuit court in Nebraska.

At that hearing it appeared that the existing agreements, with their thirty day notice provisions, had been in force and effect for many years by agreement between the railroad and the employees. The court held that under these circumstances the provisions of the existing agreements were prima facie evidence of what was fair and reasonable and held that it was erroneous procedure for the receivers to undertake to revise these agreements and adopt changed rules without giving the required thirty days' notice to the employees and that it was error for the court to have approved such act.

In its discussion of the situation, the court took judicial notice of certain stock issues and bond issues of the Union Pacific and remarked that there would seem to be no equity in reducing the wages of the employees below what was reasonable and just, in order to pay dividends on stock and interest on bonds of this character. (p. 13)

However, the precise holding of the court was that the procedure in changing the rules without notice was fundamentally erroneous. The court said:

"The recommendation of the receivers to adopt their schedule cannot be accepted by the court for another reason. That schedule was adopted without affording to the men or their representatives any opportunity to be heard. This was in violation of the agreement existing between the company and the men, by the terms of which no change of the schedules was to be made without notice to the men and granting them a hearing. This was a fundamental error. The receivers should have given notice and invited the men to a conference even if there was no contract requiring it. (13)

Obviously, that case has no application whatsoever to our present situation. That case turned entirely on a question of equity receivership procedure.

In cases of wage disputes involving an isolated industry, in which sometimes it has been asserted that the question of ability of that industry to pay standard scales of wages would not be considered, the doctrine has always been that if a particular plant in a given industry is not operated with sufficient efficiency to enable it to pay the standard scales of wages customarily paid in the industry, then it is of no social or economic justification and ought to go out of business. No one can quarrel with this principle.

This principle, however, has no possible application to a wage controversy like the one before this Board, which involves not an isolated or particular branch of an entire industry, but, on the contrary, involves the entire industry, a nation-wide industry, a key industry, and an industry which is fundamentally indispensable to the whole economic and social order of the country. It involves, moreover, an industry which is admitted to be operated with high efficiency. The railroad industry of the United States cannot go out of business. If it did, our form of civilization would be destroyed.

The ability of the industry to pay, in the broad sense of considering the condition of the entire industry as related to wage scales and the ability of the entire industry to support such scales, has always been given consideration in wage movements involving the entire railroad industry, and this is in entire accord with the other fundamental doctrine of standardization.

In its application of the criteria for wage adjustments set up by Title III of the Transportation Act, the Railroad Labor Board, in the general wage movements upon which it passed, did give consideration to the general conditions of the industry and to its ability to support the wage rates in issue. Its interpretation of the language of Title III, "among other relevant circumstances," as announced in Decision No. 2, included among such circumstances, "the relation of railroad wages to

the aggregate of transportation costs and requirements for betterments, together with the burden on the entire people of railroad transportation charges." (p. 16) This was simply another way of saying that the Board gave consideration to the general condition of the industry and to its general ability to support the wage scale in issue, without undue burden on the public by increased transportation costs, and without hampering the requirements of the railroads for expenditures for additions and betterments.

In Decision No. 147, effecting the 1921 decreases, the Labor Board gave vital consideration to the ability of the railroad industry to support the wage levels effected by the previous Decision No. 2. We have already quoted at length from this decision under Point II of this argument. It will be recalled that the Board pointed out that Decision No. 2 was rendered in a period of inflation, rising prices and high cost of living, but that since then very decided changes had taken place in business, industry and financial conditions in the United States, which in varying measure had affected all industries and the entire people. It pointed out that the disastrous fall in prices and the resulting cutting down of production, had affected all lines of industrial life all over the United States, "and produced conditions which have to be met and in whose burdens all have to share." (p. 137)

On the same page the Board expressly stated that it had made a general case of various applications for wage reductions, because it appreciated and knew the general financial and industrial conditions of the country and considered the appeals of some of the carriers for immediate relief.

On page 139 of this decision, the Board pointed out the most unfortunate condition that in many localities large numbers were out of employment on account of the prevailing depression, and hence were without wages, and it added. "on these elements and the others described by statute to be considered, the Board has looked to the general conditions existing and brought to its attention, as well as the evidence offered as to particular localities and carriers."

On page 140 of the decision, the Board said:

> "Whatever may be said as to the origin or contributing causes, there has been and is a marked, and to some extent distressing and disastrous, depression in business and industry affecting the entire country and some lines of production most seriouly. As a result heavy financial losses have been suffered and many hundreds of thousands thrown out of employment and deprived of all wages, and this loss of purchasing power by them has in turn accelerated the general depression by reducing the demand for the products they would otherwise have purchased."

And further on the same page, the Board said:

> "It should be recognized by all that the problem before us is chiefly an economic one, and we are all confronted by adverse and troublesome conditions which everyone must help to solve. It should not be looked upon as a struggle between capital and labor, or the managements and the employees."

In Decision No. 1074 the Labor Board very definitely gave material consideration to the general necessities of the railroad industry. It said in that decision (p. 494):

> "That the carriers shall have a fair opportunity to profit by the revival of business in order that they may expand their facilities is absolutely indispensable to their efficient service to the American public. Their unpreparedness now to cope with any greatly increased traffic is notorious. Every facility of railroad transportation has been skimped over the last several years, and, as to mileage, there has been an actual decrease instead of an increase.
>
> "This statement, in the connection used, must not be misconstrued to mean that the employees should be called upon to bear the cost of railway rehabilitation, improved service and reduced rates. It simply means that it is only patriotic common sense and justice that every citizen, including the railway employee, should cooperate in a cordial spirit, should bear and forebear, until the carriers are back on their feet."

Thus it will be seen that the wage adjustments of 1921 and 1922 gave important consideration to the condition and capacity of the industry as well as to the fluctuations of costs of living and purchasing power of the employee's dollar.

When the employees themselves, in 1932, accepted the voluntary 10 per cent deduction, they of course did it basically and fundamentally upon the consideration of the necessities of the railroad industry and its inability in the extreme depression to continue to pay the prevailing full rates. No other reason could have urged them to that agreement. When the condition of the railroad industry and its ability to pay gradually improved in 1934 and 1935, the employees used this as a basis for demanding the restoration of the 10 per cent deduction and secured the restoration on this ground. The basic ground for the demand for the 1937 increases was that business was picking up, that the condition and ability of the railroad industry was improving and, as testified by Mr. Harrison on cross-examination, that it was prophesied by regional advisory boards that carloadings were going to reach the figure of a million a week. Mr. Harrison admitted that he urged this as a basic reason for the 1937 increases. (Tr. 2676)

Of course, this simply means that the employees themselves have consistently used the ability of the industry to pay higher wage rates, in times of rising business and revenues, to force up wage scales, especially in national movements. By the same token, of course, the inability of the industry, as a nation-wide industry, to support high wage rates, in times of declining general and railroad business, obviously must be given the same kind of consideration.

In a case of this kind dealing with standardized wage rates and dealing with all alike, there is no room for the application of such a doctrine as that the condition and ability of the industry to pay is not to be given consideration.

VI.

THIS BOARD HAS NO FUNCTION TO PERFORM WITH REFERENCE TO ESTABLISHING A BROAD, LONG TERM NATIONAL TRANSPORTATION POLICY.

In a difficult case, it is old strategy to abuse the opposition or to try to shift the debate to other fields than those in issue in the case.

We have listened with much interest to the vigorous testimony by Mr. George Harrison, outlining what he refers to as a broad, long range, national transportation policy. This may be very interesting but it has nothing whatsoever to do with the present controversy and with the issues which are here raised for this Board to decide.

The circumstances under which Mr. Harrison evolved his new national transportation platform and the use which he has made of it in this case are rather unusual.

Mr. Harrison was one of the consultants of the Splawn Committee in connection with the report which it made to the President this year and which the President transmitted to Congress. The Splawn Committee Report, on the basis of most mature and comprehensive study and consideration, and after consultation with a variety of consultants, made recommendations which divided themselves into two parts: one part dealing with a program for immediate relief of the railroads; the other part dealing with a long range program for a sound national transportation system. It was in connection with the first, or immediate relief, program, that the Splawn Committee Report discussed the proposed wage reduction. Necessarily the proposed wage reduction is a most immediate part of a program of immediate relief. But it has no bearing on a long range program for a national transportation system. Many wage adjustments, either up or down, might occur in accordance with changed business conditions before such a long range program could be established or become effective.

Mr. Harrison was at pains to point out to the Board that he was named by the President as one of a committee of six, composed of three railroad executives and of three railroad labor executives, and that the President asked this committee to undertake to do over again what the Splawn Committee had done, that is, to work out together and prepare a broad program for long term rehabilitation of the railroads and for a national transportation system. Mr. Harrison testified that this committee met on September 20th last, but adjourned its deliberations until after the termination of this wage controversy because he, representing labor, stated that labor could not cooperate with management on such a long term program until after the termination of this controversy, because labor could not with its left hand fight a wage contro-

versy against the managements and with its right hand cooperate with the managements on a long term transportation program. (Tr. 2585-2587)

Although this most recent committee, as the result, has deferred its deliberations until after the termination of the present wage controversy and has made no joint study of the long term problem, yet Mr. Harrison, without collaboration with the entire committee of six, of which he is an appointed member, has outlined his own long term program for a national transportation system, and, without awaiting the submission of his program to the other members of his committee, or to the President, or to Congress, has brought it forward in this case as an *ex parte* program and has undertaken to make use of it in defense of the wage reduction controversy.

More than this, it is obvious from Mr. Harrison's testimony that this program of his is not a matured study. He testified that the 18 organizations which he represents in this proceeding had only approved his program the night before he presented it in evidence. (Tr. 2588) It seems obvious that it was a program hastily developed to be used in the defense of this controversy, although the development of such a program by the President's committee of six was to await the termination of this controversy.

In any event, this Board has not been appointed by the President to consider or to decide upon or to make recommendations with regard to a long term national transportation policy. No authority is given to the President to appoint such an Emergency Board for such a purpose by the Railway Labor Act. The sole function of this Board, under the Railway Labor Act and under the terms of its appointment, is to pass upon this immediate, specific controversy regarding a reduction of railway wages and that controversy is not a part of any long range transportation program, but is a precise and specific issue arising out of the necessity of immediate relief to railroads.

The Board may be interested in hearing Mr. Harrison's views as to a long range program, or Senator Wheeler's, Senator Truman's or Mr. Lowenthal's, but it certainly has no function to decide upon such a program. Since this is so, the program has no bearing upon the issues in this case. We think its presentation is an attempt to divert attention from the specific issues arising in this case and to carry attention over into another field.

VII.

THE ATTEMPT TO DUMP INTO THIS CASE AT THE LAST MINUTE THE RECORDS OF THE WHEELER INVESTIGATING COMMITTEE IS ESSENTIALLY UNFAIR AND AN ATTEMPT TO DENY THE CARRIERS THE FUNDAMENTAL RIGHT OF DUE PROCESS OF LAW.

There is nothing in the Railway Labor Act which authorizes this Emergency Board to review the work of a senatorial investigation committee. There is nothing in the written authorization to this Board authorizing it to enter into any such field of activity.

Senator Wheeler's Investigating Committee has spent about two years investigating a small list of railroads and certain alleged financial abuses in connection with them. Even if that investigation is complete, nothing has been officially made public as a result of its efforts.

On the very eve of the termination of the present case, upon which the controlling statute has placed an absolute restriction of time, the employees have brought before this Board the Chairman of the Senate Investigating Committee and have dumped before the Board enormous volumes of transcript of the hearings before that Committee covering a period of two years and galley proofs of some kind of draft of a report which it has been physically impossible for us even to attempt to examine. This was done when, under the time limit imposed by the statute and agreed upon on the first day of the present hearings, only one day was left for the completion of the trial of the present case.

The railroad industry of the United States was not under indictment before the Wheeler Investigating Committee. No bill of particulars was presented by that Committee putting the entire railroad industry on indictment. The industry as such had no day in court before the Committee. The Committee investigated certain particular railroads and certain isolated transactions in connection with them and called before it those whom it desired.

In a long course of hearings by an inquisitorial body of this kind, manifestly a record would be built taking a wide range. There are no particular rules of evidence governing such an inquisition and it can run at large in many directions.

Whatever findings that Investigating Committee may ultimately make and publish will be addressed to the Senate, which appointed it, and will be the subject of legislative consideration by the Congress. It is no conceivable part of the function of the present Emergency Board either to approve or disapprove any findings that may be published by the Committee. As we have said, this Board is a board having judicial or quasi-judicial functions and nothing in organic or statutory law sets this Board up as an appellate tribunal to review findings by the Wheeler Investigating Committee.

Under these circumstances, we most respectfully submit to the Board that the effort of the employees, on the very eve of the close of this case, to dump before this Board the record of the hearings before the Wheeler Committee and to have the Chairman of that Committee express his conclusions based upon his committee's investigation and make arguments to this Board in support of his conclusions, is a denial to the carriers in this case of the very fundamental principle of fair play, which is the basic and indispensable requirement of due process of law in all judicial and quasi-judicial proceedings.

The fundamental rule in this regard, always recognized and enforced by the United States Supreme Court, and even more rigorously enforced in the case of quasi-judicial or administrative proceedings, was stated by the court in *Interstate Commerce Commission* v. *Louisville & Nashville R. R. Co.*, 227 U. S. 88, 93, where it was said:

> "The Commission is an administrative body and, even where it acts in a quasi-judicial capacity, is not limited by the strict rules, as to the inadmissibility of evidence, which prevail in suits between private parties. *Int. Com. Comm.* v. *Baird*, 194 U. S. 25. But the more liberal the practice in admitting testimony, the more imperative the obligation to preserve the essential rules of evidence by which rights are asserted or defended. In such cases the Commissioners cannot act upon their own information as could jurors in primitive days. All parties must be fully apprised of the evidence submitted or to be considered, and must be given opportunity to cross-examine witnesses, to inspect documents and to offer evidence in explanation or rebuttal. In no other way can a party maintain its rights or make its defense. In no other way can it test the sufficiency of the facts to support the finding; for otherwise, even though it appeared that the order was without evidence, the manifest deficiency could always be explained on the theory that the Commission had before it extraneous, unknown but presumptively sufficient information to support the finding. *United States* v. *Baltimore & Ohio S. W. R. R.*, 226 U. S. 14."

What earthly opportunity were the carriers afforded to make any effort, not only to produce witnesses or to offer evidence in explanation or in rebuttal of Senator Wheeler's charges, but even to inspect the voluminous documents thus deposited *en masse* before this Board? None at all.

A mere glance at the wide range of these charges shows the utter impossibility of any attempt on the part of the carriers to rebut or explain. The Senator's charge regarding alleged waste of the Pullman Company monopoly alone would require weeks of litigation to arrive at the merits. It is a matter of common knowledge that the operation of the Pullman system is probably the most efficient passenger car pool in the world. That the Pullman Company has not made inordinate profits out of its business seems evident from the fact that the Interstate Commerce Commission has recently had to grant it authority to increase rates. How could the carriers undertake to try the issues involved in such a matter in one day?

The charge of failure to standardize articles of equipment would take weeks of litigation to arrive at the merits. The same is true with regard to charges about the purchase of steel rail, reciprocity in purchasing from shippers, alleged wasteful undermaintenance of roads in pre-receivership periods, losses through purchase of stock or of terminal properties or through holding companies, or the highly technical question of the merits of forwarding companies, or the similarly highly technical question of charges by private car lines, or many other of like charges.

Take the outstanding example of the charge of loss or waste through failure of receivers or trustees in bankruptcy to perform their duty of investigating and suing for past mismanagement and fraud. No particular trustees or receivers were named. There was no specification which would admit of meeting the charges. The statute imposes upon the courts and the trustees absolute duties in this regard. This charge is not even directed against the railroad industry but is directed against courts of the United States and their officers, without naming the courts. How could the carriers undertake to make any defense to such a charge?

Yet, on the isolated instances adverted to by the Senator, the imputation is sought to be left by the employees that these things are typical of the entire railroad industry. We submit that this last minute effort to "smear" the entire industry on the basis of certain isolated charges developed by a Senate investigating committee, which has not yet officially completed its labors and whose investigation has run throughout years, is an attempt to deny to the carriers in this controversy the fundamental requirements of due process and the fundamental right of fair play.

Under these circumstances, the most we could do was to produce as a witness Mr. John J. Pelley, President of the Association of American Railroads, who has been president of two railroads and has spent a lifetime in the industry, and have him answer, from his general knowledge and experience, the charges sought to be predicated upon the Wheeler Committee investigations and to give his general conclusions in answer to the similarly general conclusions of the Senator. He testified before the Board, with the utmost candor and frankness and with a perfect willingness to answer any questions of counsel, or of the Board, or of Mr. Lowenthal, who hastened, as if in defense of the Committee, to cross-examine Mr. Pelley at considerable length. (Tr. 3201-3289)

We respectfully submit that the Board should eliminate the record of the Wheeler Investigating Committee and the conclusions and arguments of the distinguished Senator from its consideration of the specific issues which are here presented for the decision of the Board.

VIII.

CONCLUSION.

We submit that there is no essential conflict as to the facts in this case relevant to the issues before this Board. There is no dispute as to the desparate financial condition of the railroads. There is no dispute that they must have immediate relief. It cannot be disputed that no long range program of broad legislation for the transportation system can give the necessary immediate relief.

It is proved beyond dispute that the earnings of railway employees, in purchasing power, are far the highest that they have ever been in history; that they have gone up continuously and progressively while all other controlling factors, the financial condition of the railroads, the general business of the country, the earnings of all other classes of citizens and workers, and the national income itself have gone down.

We submit that the evidence shows beyond the peradventure of doubt that the constant drive of the railway labor organizations for higher and higher wages has pushed the wages up to a point where they are out of balance with all other controlling factors, not only in the railroad industry, but in the general business and life of the country.

While there may be much merit in the general doctrine of preserving reasonably high wages for the purpose of preserving so-called consumer purchasing power, this doctrine like any other doctrine can be pushed to the point of absurdity. And when the wage scales of an indispensable, key industry like the railroad industry are pushed to a point where they are out of balance and where the industry cannot support them, as is now the case, the maintenance of that unbalanced condition cannot lead to general recovery through a theoretical maintenance of the purchasing power of workers. The total money spent by railroads on payroll can only provide a given amount of purchasing power, no matter who spends the money.

The present excessive wage rates in the industry have brought the industry to a position where it cannot open the doors of its purchasing houses, cannot buy the necessary materials and supplies and continue the necessary maintenance work on its properties. An adjustment of wages to a reasonable basis, as would be accomplished by the proposed reduction will, we submit, improve the general economic situation and ultimately increase the general consumer purchasing power, by enabling the railroad industry to continue its normal purchases, the money for which will immediately flow into general circulation, increasing the production of basic durable goods industries, increasing employment in those industries, increasing the purchasing power of those industries

and of their employees. And, at the same time, an adjustment of railway wages to a reasonable basis can only have the effect of improving the opportunity for employment on the railroads and thus of spreading the purchasing power of the total railroad payroll.

If this Board will assume that the movement for last year's increases, instead of coming to a climax in the summer and fall of 1937, and instead of being based upon erroneous prophesies of a continued business up-turn, had come to a crisis at this time this year with business and conditions as they now are, and if, under those circumstances, this Emergency Board had been appointed to pass upon the reasonableness of a demand for increased wages, it would seem clear that this Board, in such case, would have been obliged to find on the evidence in this case that no increase was justified.

On the same assumption, but on the added assumption that, under such circumstances, the railroads had countered against the employees' demand for increases with a counterdemand for a reduction in wage rates, and the resulting issues had been tried out before this Board on the present record, the Board, we submit, would have been forced to the conclusion, not only that no increase in wage rates was justified, but that a reduction to the level which we are now seeking would be in order.

We submit that upon all the competent and relevant evidence in the case the Board should make an ultimate finding in favor of the carriers.

Respectfully submitted,

J. Carter Fort,
William T. Faricy,
Henley C. Booth,
Guy W. Knight,
Sidney S. Alderman,
Attorneys for the Carriers.

Washington, D. C.,
October 17, 1938.

APPENDIX.

Selected Exhibits of Carriers.

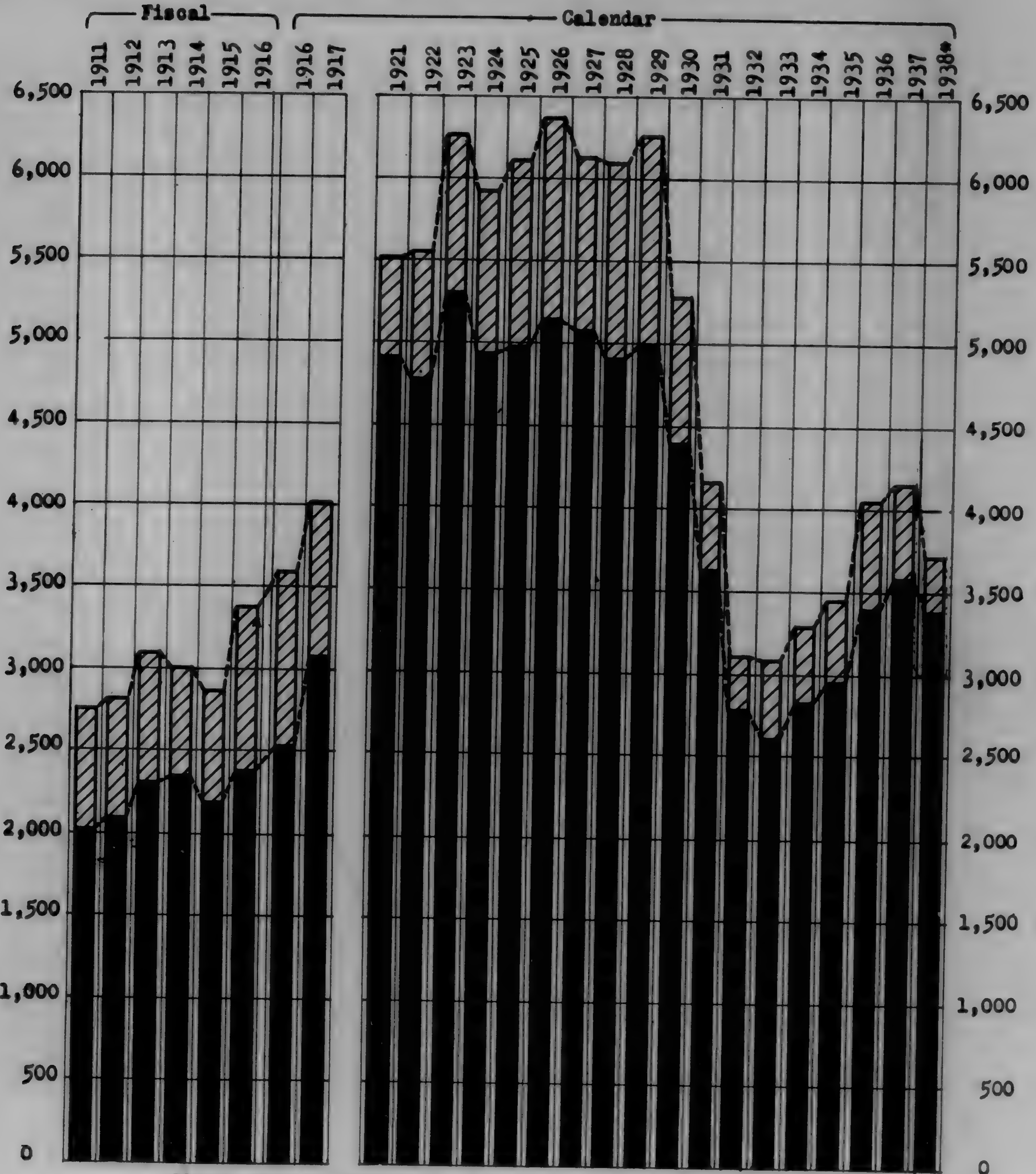
INDEX TO APPENDIX.

FINANCIAL TRENDS IN THE RAILWAY INDUSTRY

Carriers' Exhibit No. 2
Witness: J. H. Parmelee

TOTAL OPERATING REVENUES, TOTAL OPERATING COSTS AND TAXES AND NET RAILWAY OPERATING INCOME

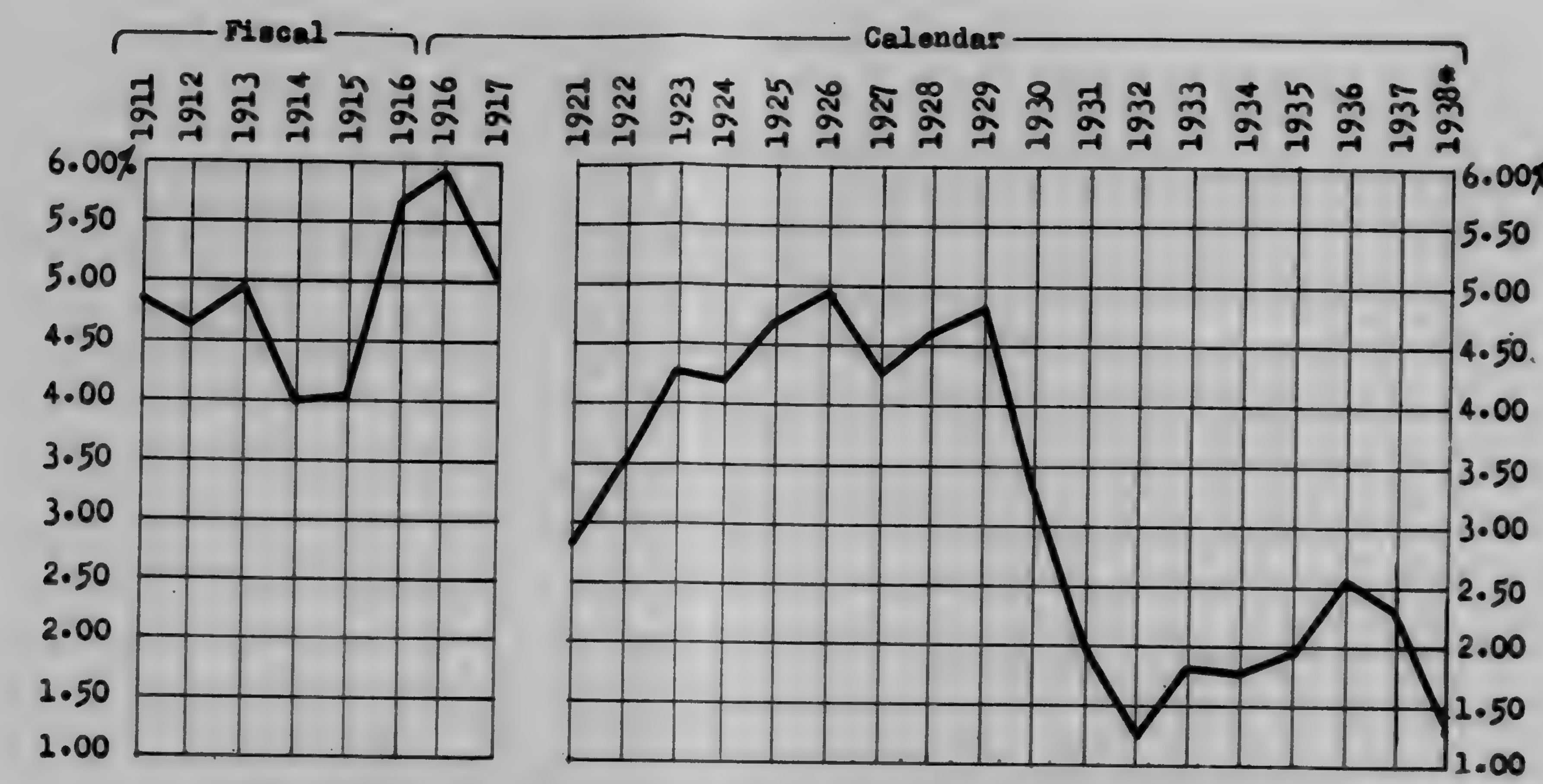
(Scale - Millions of dollars)



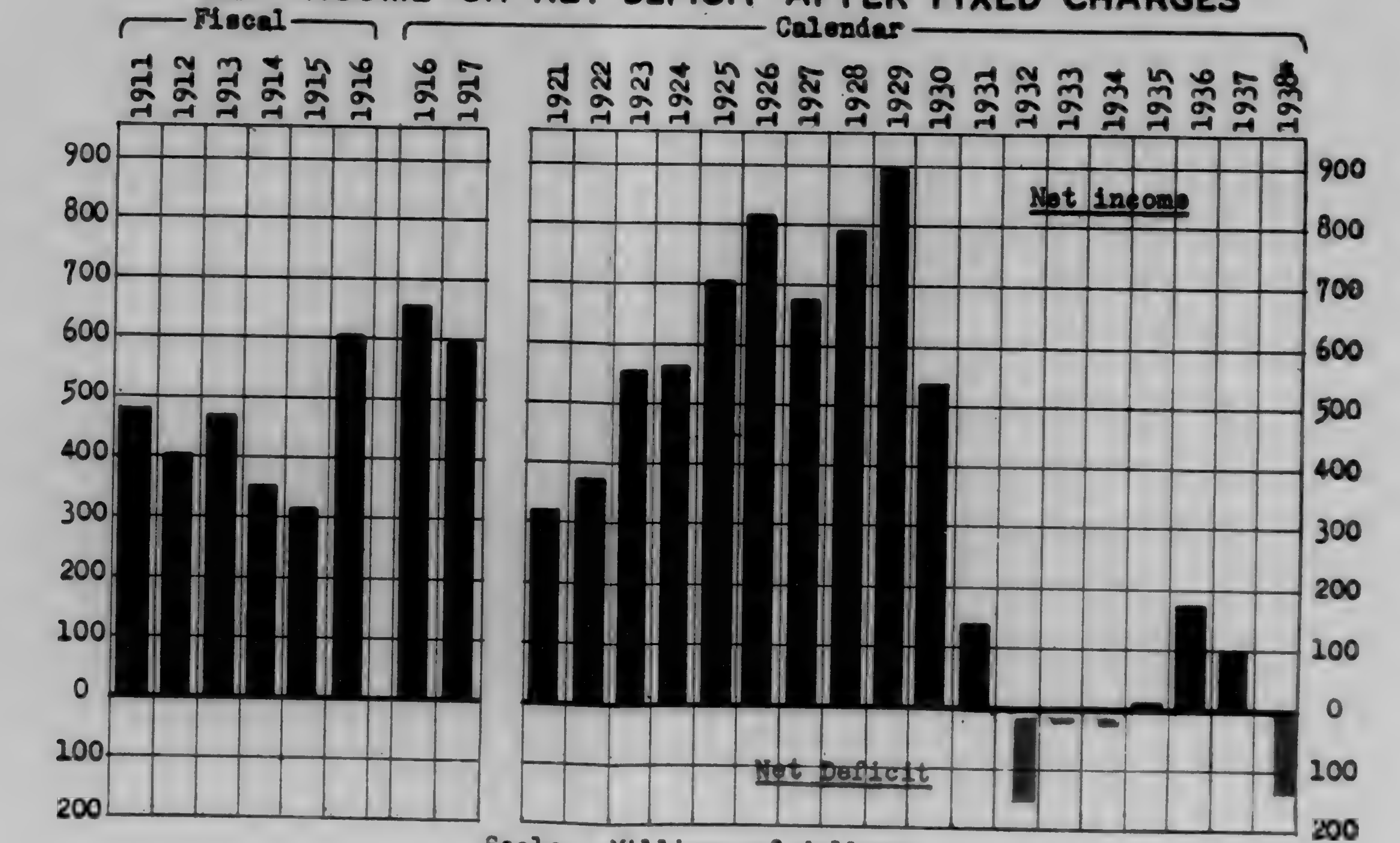
Black portion represents Operating costs, and taxes.
Shaded portion represents Net Railway Operating Income.
Entire bar represents Total Operating Revenues.
* Year ended June 30, 1938.

File W-338-38

RATE OF RETURN



NET INCOME OR NET DEFICIT AFTER FIXED CHARGES



Scale - Millions of dollars.

Carriers' Exhibit No. 12
Witness: J. H. Parmelee

RAILWAY RECEIVERSHIPS AND TRUSTEESHIPS 1921 TO 1938

As of:	Miles of road operated by receivers or trustees	Per cent of total railroad mileage operated by receivers or trustees
Dec. 31, 1921	13 512.35	5.23
1922	15 259.11	5.93
1923	12 623.24	4.89
1924	8 105.24	3.14
1925	18 686.99	7.23
1926	17 631.55	6.81
1927	16 752.00	6.45
1928	5 256.00	2.02
1929	5 703.00	2.19
1930	9 486.00	3.64
1931	12 970.00	4.99
1932	22 545.00	8.71
1933a	41 698.00	16.24
1934a	42 168.00	16.54
1935a	68 345.00	26.87
1936a	69 712.00	27.57
1937a	70 884.00	*28.15
July 31, 1938a	78 016.00	*30.98

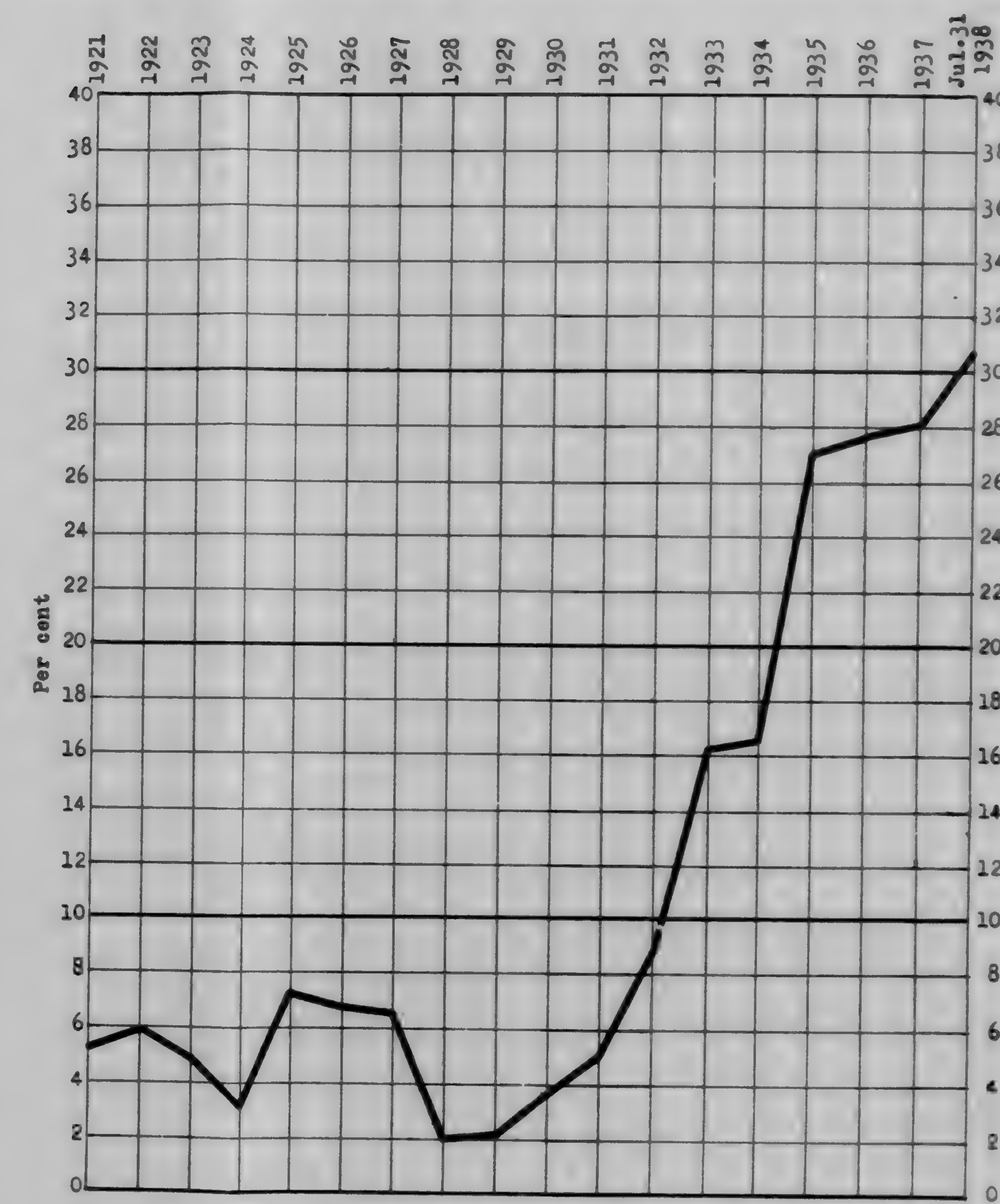
* Computed on mileage as of Dec.31,1937 (251,829 miles).
a Figures include railways in charge of trustees; 1933, 27 railways operating 24,980 miles; 1934, 29 railways operating 25,475 miles; 1935, 39 railways operating 52,425 miles; 1936, 46 railways operating 54,209 miles; 1937, 67 railways operating 55,772 miles; July 31, 1938, 72 railways operating 62 489 miles.

File W-349-38

RAILWAYS IN THE HANDS OF RECEIVERS AND TRUSTEES JULY 31, 1938

Road	Miles of road operated on December 31, 1937
Class I Railways in Receivership:	
Ann Arbor	294
Central of Georgia	1 927
Florida East Coast	685
Georgia & Florida	408
Minneapolis & St.Louis	1 528
Mobile & Ohio	1 194
Norfolk Southern	809
Pittsburg, Shawmut & Northern	191
Rutland	407
Seaboard Air Line	4 318
Wabash	2 433
Total 11 roads	14 194
Class I Railways in Trusteeship:	
Akron, Canton & Youngstown	171
Chicago & Eastern Illinois	927
Chicago & North Western	8 391
Chicago Great Western	1 505
Chicago, Indianapolis & Louisville	573
Chicago, Milwaukee, St.Paul & Pacific	11 025
Chicago, Rock Island & Gulf	627
Chicago, Rock Island & Pacific	7 511
Denver & Rio Grande Western	2 580
Duluth, South Shore & Atlantic	549
Erie	2 403
Gulf Coast Lines:	
Beaumont, Sour Lake & Western	146
New Orleans, Texas & Mexico	191
San Antonio, Uvalde & Gulf	317
St.Louis, Brownsville & Mexico	602
International-Great Northern	1 155
Minneapolis, St.Paul & S.S.Marie	4 301
Missouri-Illinois	193
Missouri Pacific	7 177
New Jersey & New York	46
New York, New Haven & Hartford	2 028
New York, Ontario & Western	577
New York, Susquehanna & Western	143
St.Louis-San Francisco	4.886
St.Louis Southwestern	1 011
St.Louis Southwestern of Texas	695
Spokane International	164
Western Pacific	1 208
Total 28 roads	61 102
Class II Roads in Receivership - Total 14 roads	1 149
Class II Roads in Trusteeship - Total 14 roads	1 222
Class III Roads in Receivership - Total 8 roads	184
Class III Roads in Trusteeship - Total 5 roads	131
Lessor and Proprietary Roads - Total 29 roads	-
Circular and Unofficial Roads - Total 2 roads	34
GRAND TOTAL 111 ROADS	78 016

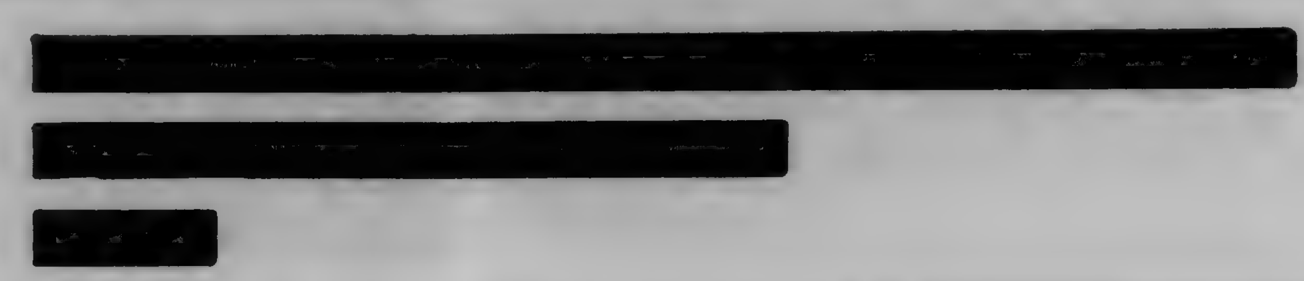
PER CENT OF TOTAL MILEAGE OPERATED BY RECEIVERS OR TRUSTEES



Carriers' Exhibit No. 18
Witness: J. H. Parmelee

CAPITAL EXPENDITURES, INVESTMENT IN ROAD AND EQUIPMENT AND CAPITALIZATION, 1921 - 1937

CLASS I, II, AND III RAILWAYS, INCLUDING LESSOR COMPANIES
(Excluding Switching and Terminal Companies)

Item	Jan.1,1921	Dec.31,1937	1937 over 1921	Increase - 17 years
Gross Capital Expenditures	-	-	a $9 570 875 000	
Investment in Road and Equipment	$19 849 000 000	$25 636 000 000	$5 787 000 000	
Net Capital in the Hands of the Public	$16 994 000 000	$18 319 000 000	$1 325 000 000	

a Gross capital expenditures - Class I railways for period 1921 to 1937, inclusive.

Source: Reports of the Interstate Commerce Commission.

File W-322-38

Carriers' Exhibit No. 49
Witness: J. Elmer Monroe

COMPARISON RETURN TO LABOR AND RETURN TO INVESTORS

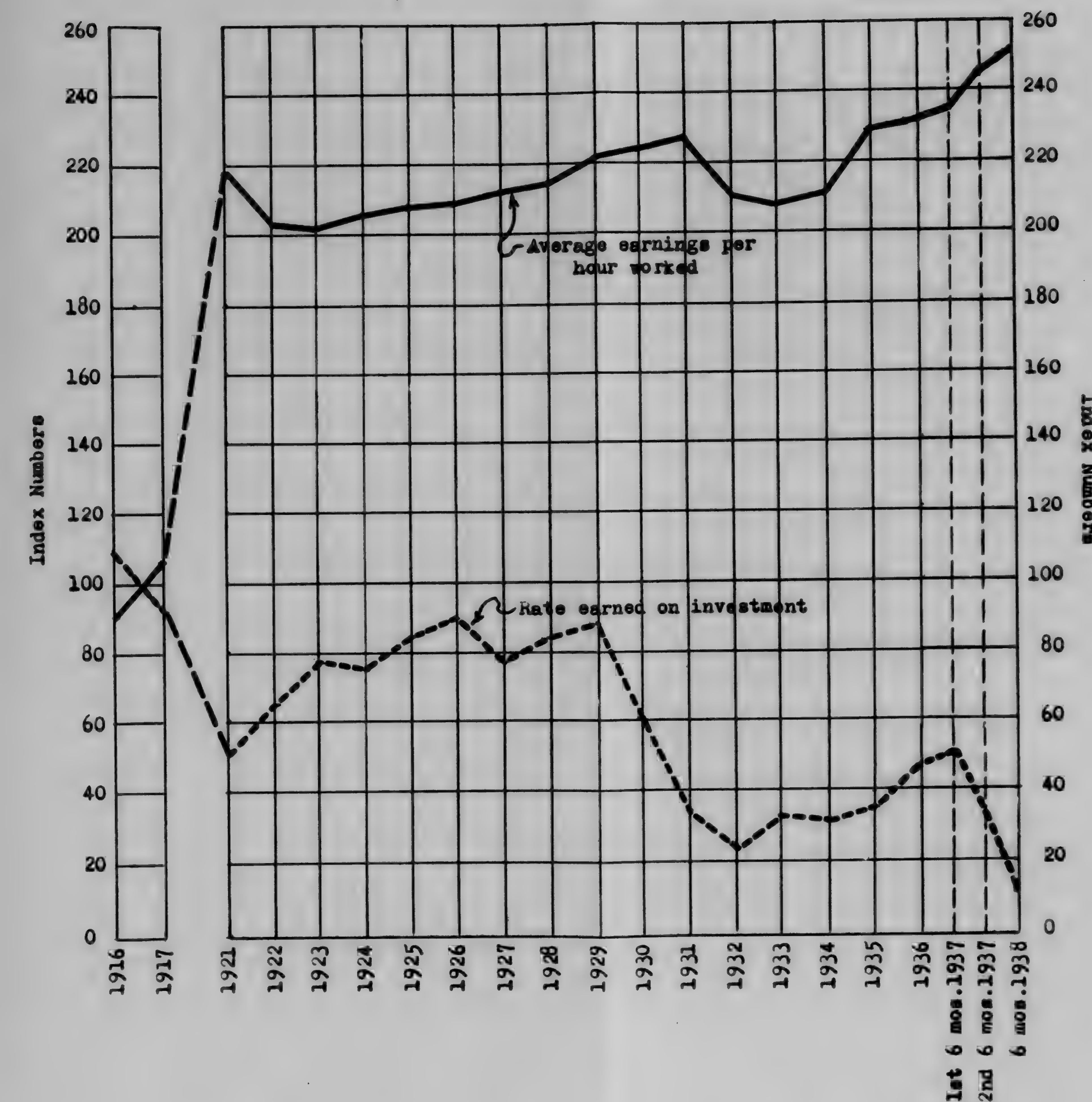
Railways of Class I in the United States

(Average 1916-17 = 100)

Year	Railway employees, excluding railway officers, and classes of employees not represented in wage movement a		Return earned on investment	
	Average earnings per hour worked or held for work	Ratio to 1916-17	Cents per dollar*	Ratio to 1916-17
	(cents)	(per cent)	(cents)	(per cent)
1916	27.5	92.0	5.90	108.3
1917	31.9	106.7	5.02	92.1
Avge.1916-17	29.9	100.0	5.45	100.0
1921	65.6	219.4	2.81	51.6
1922	60.3	201.7	3.52	64.6
1923	60.0	200.7	4.28	78.5
1924	61.3	205.0	4.20	77.1
1925	62.2	208.0	4.71	86.4
1926	62.6	209.4	4.96	91.0
1927	63.8	213.4	4.28	78.5
1928	64.9	217.1	4.61	84.6
1929	66.3	221.7	4.81	88.3
1930	67.4	225.4	3.28	60.2
1931	68.4	228.8	1.99	36.5
1932	63.1	211.0	1.24	22.8
1933	62.6	209.4	1.82	33.4
1934	63.5	212.4	1.78	32.7
1935	68.8	230.1	1.93	35.4
1936	69.6	232.8	2.57	47.2
1937:				
1st 6 mos.	69.8	233.4	2.84	52.1
2nd 6 mos.	73.4	245.5	1.88	34.5
6 mos.1938	75.9	253.8	0.67	12.3

a Excludes yardmasters and assistant yardmasters; service reported on daily basis and no figures available to reduce to hourly basis.

* Computed on investment in railway property used in transportation service, including working capital.



File W-341-38

Carriers' Exhibit No. 54
Witness: W. I. King

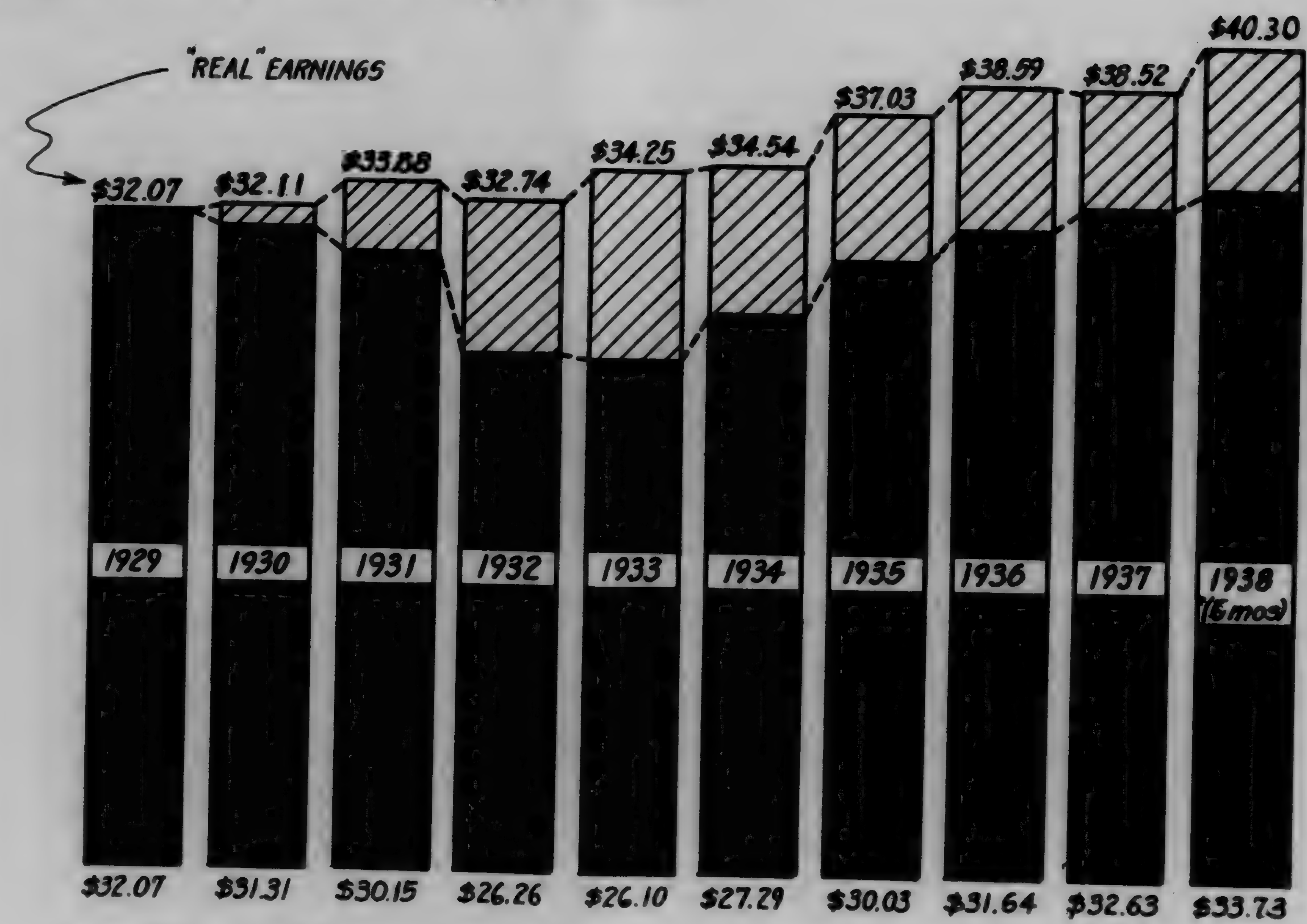
AVERAGE WEEKLY EARNINGS OF RAILWAY EMPLOYEES

Railways of Class I in the United States

(Excluding Railway Officers and Classes of Employees not represented in wage movement)

Calendar year	Average per week - Actual	Cost of living index U.S. Department of Labor (1929 = 100)	Average per week 1929 dollars
1929	$32.07	100.0	$32.07
1930	31.31	97.5	32.11
1931	30.15	89.0	33.88
1932	26.26	80.2	32.74
1933	26.10	76.2	34.25
1934	27.29	79.0	34.54
1935	30.03	81.1	37.03
1936	31.64	82.0	38.59
1937	32.63	84.7	38.52
1938 (6 mos)	33.73	a 83.7	40.30

a Index as of June 15, 1938.



Entire charted bar represents "real" weekly earnings based on changes in purchasing power since 1929. Lower part of bar (black portion) represents actual weekly earnings, while shaded section represents increased purchasing power due to reduced cost of living since 1929.

File W-210-38

Carriers' Exhibit No. 59
Witness: W. I. King

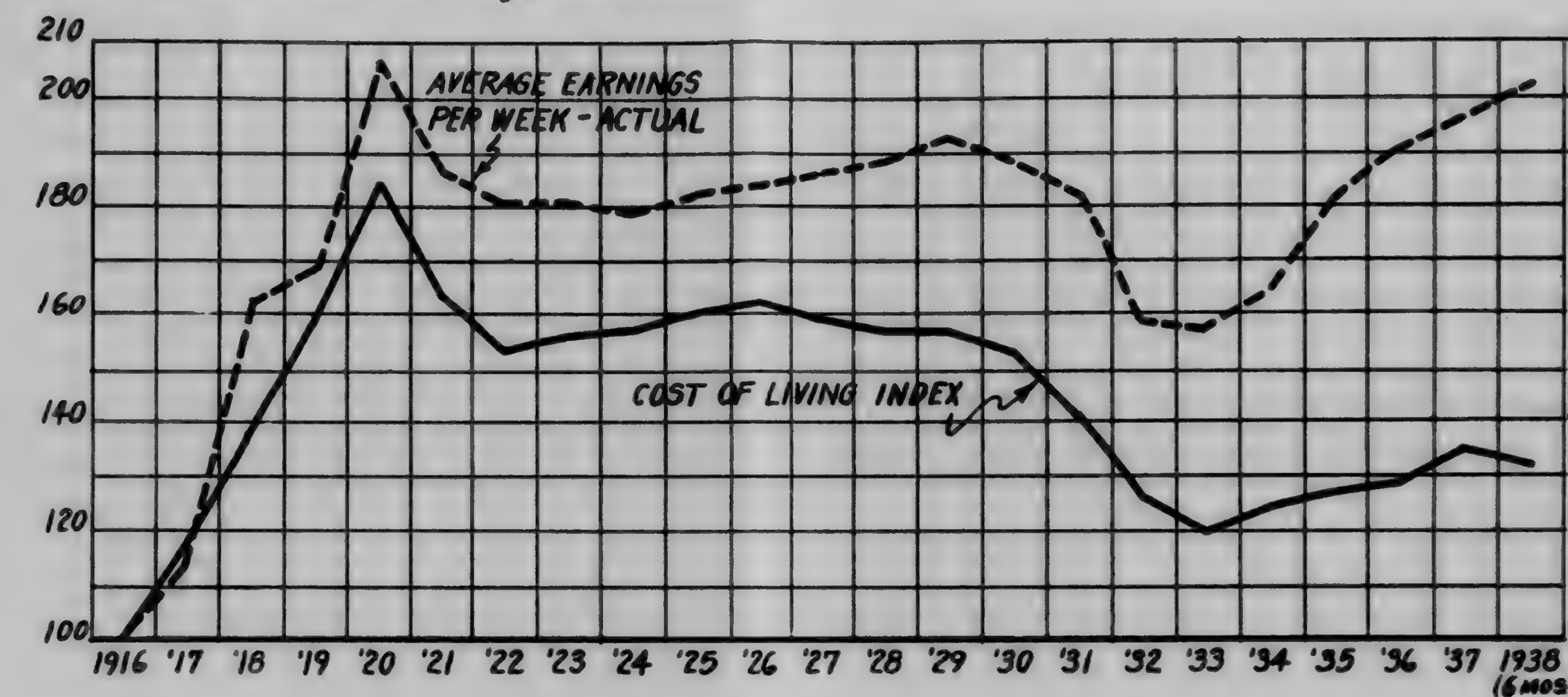
AVERAGE WEEKLY EARNINGS OF RAILWAY EMPLOYEES

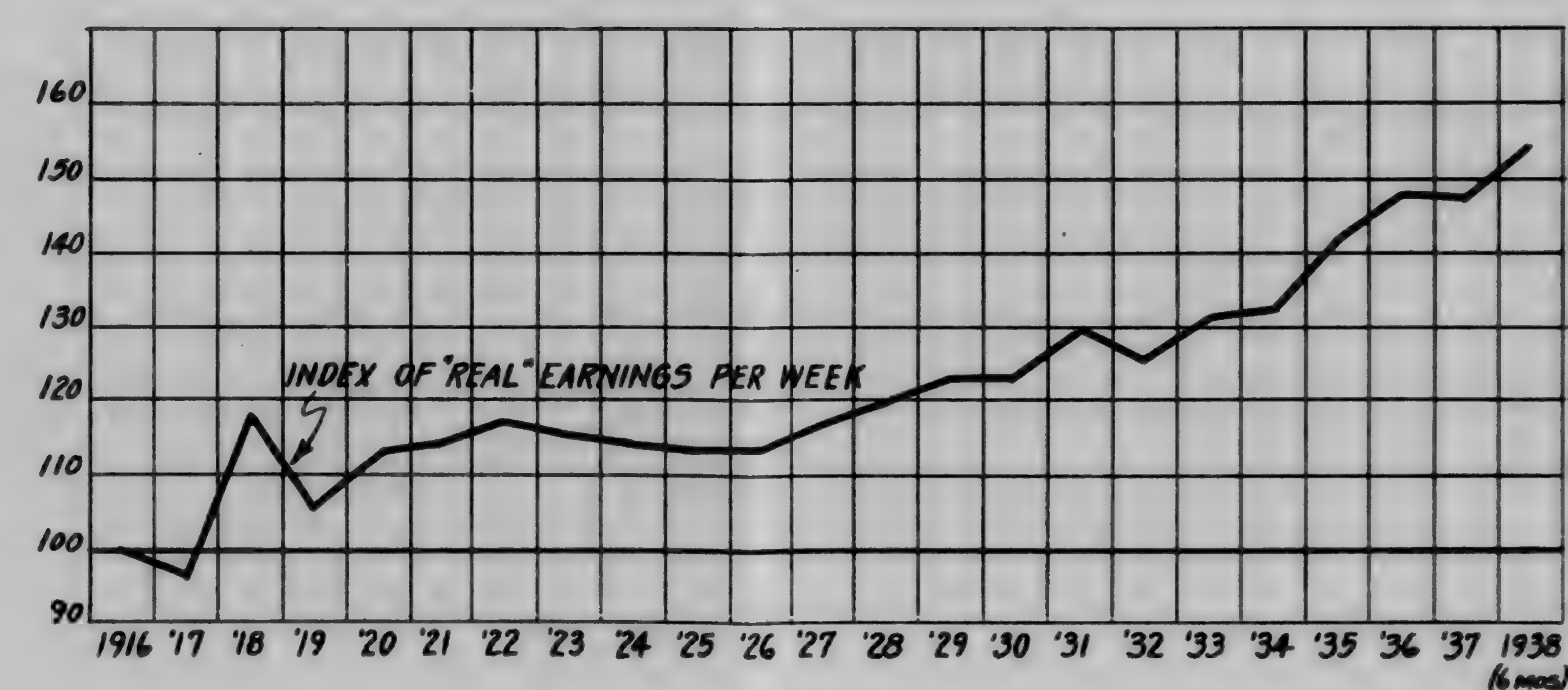
Railways of Class I in the United States

(Excluding Railway Officers and Classes of Employees not represented in wage movement)

Year	Average earnings per week - Actual		Cost of living index U.S. Department of Labor 1916=100	Index of "Real" earnings per week (1916 dollars)
	Amount	Index 1916=100		
1916	$16.59	100.0	100.0	100.0
1917	18.83	113.5	117.7	96.4
1918	26.97	162.6	138.0	117.8
1919	28.05	169.1	160.0	105.7
1920	34.35	207.1	183.9	112.6
1921	31.03	187.0	163.9	114.1
1922	29.91	180.3	153.8	117.2
1923	29.93	180.4	156.6	115.2
1924	29.63	178.6	157.0	113.8
1925	30.20	182.0	161.1	113.0
1926	30.52	184.0	162.3	113.4
1927	30.85	186.0	159.2	116.8
1928	31.20	188.1	157.4	119.5
1929	32.07	193.3	157.4	122.8
1930	31.31	188.7	153.5	122.9
1931	30.15	181.7	140.2	129.6
1932	26.26	158.3	126.3	125.3
1933	26.10	157.3	119.9	131.2
1934	27.29	164.5	124.4	132.2
1935	30.03	181.0	127.7	141.7
1936	31.64	190.7	129.1	147.7
1937	32.63	196.7	133.4	147.5
6 Mos. 1938	33.73	203.3	a 131.8	154.2

a Index as of June 15, 1938.





File W-215-38

Carriers' Exhibit No. 60
Witness: W. I. King

PER CAPITA ANNUAL EARNINGS OF EMPLOYEES - 1929 TO 1938

All Employees in the United States Compared with Railway Employees

(U.S. Department of Commerce)
(Interstate Commerce Commission)

Year	All employees in United States a		Railway employees b	
	Dollars per year	Per cent of 1929	Dollars per year	Per cent of 1929
1929	$1 451	100.0	$1 672	100.0
1930	1 417	97.7	1 633	97.7
1931	1 329	91.6	1 572	94.0
1932	1 171	80.7	1 373	82.1
1933	1 077	74.2	1 361	81.4
1934	1 129	77.8	1 423	85.1
1935	1 179	81.3	1 566	93.7
1936	1 235	85.1	1 654	98.9
1937	1 316	90.7	1 702	101.8
1938	c 1 252	86.3	d 1 760	105.3

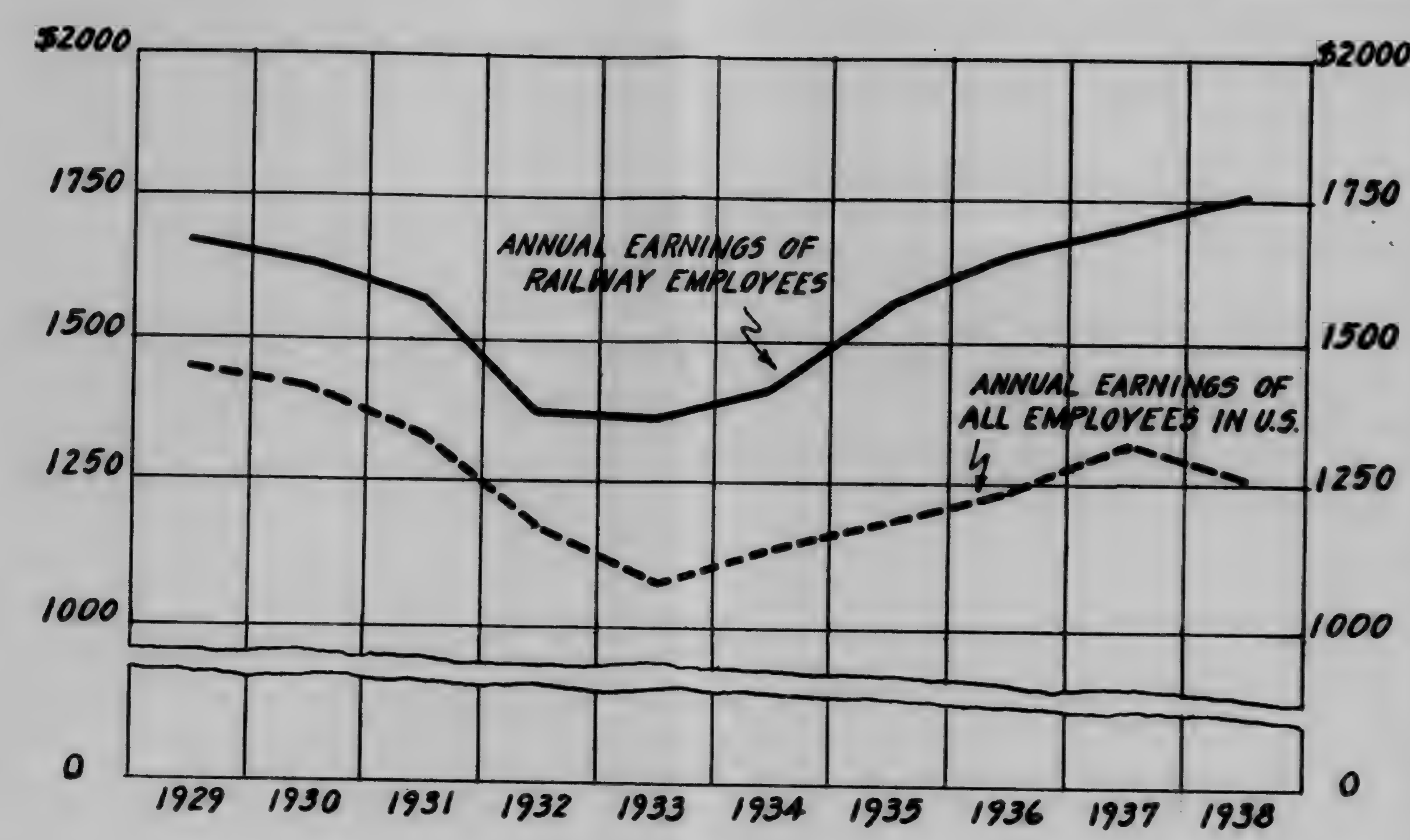
a U.S. Department of Commerce, "Survey of Current Business", June, 1938, Table 4. Does not include employers and self-employed persons, such as farmers, merchants, independent professional practitioners, etc., nor work-relief employees and unpaid family farm labor. Averages represent full-time equivalent earnings.

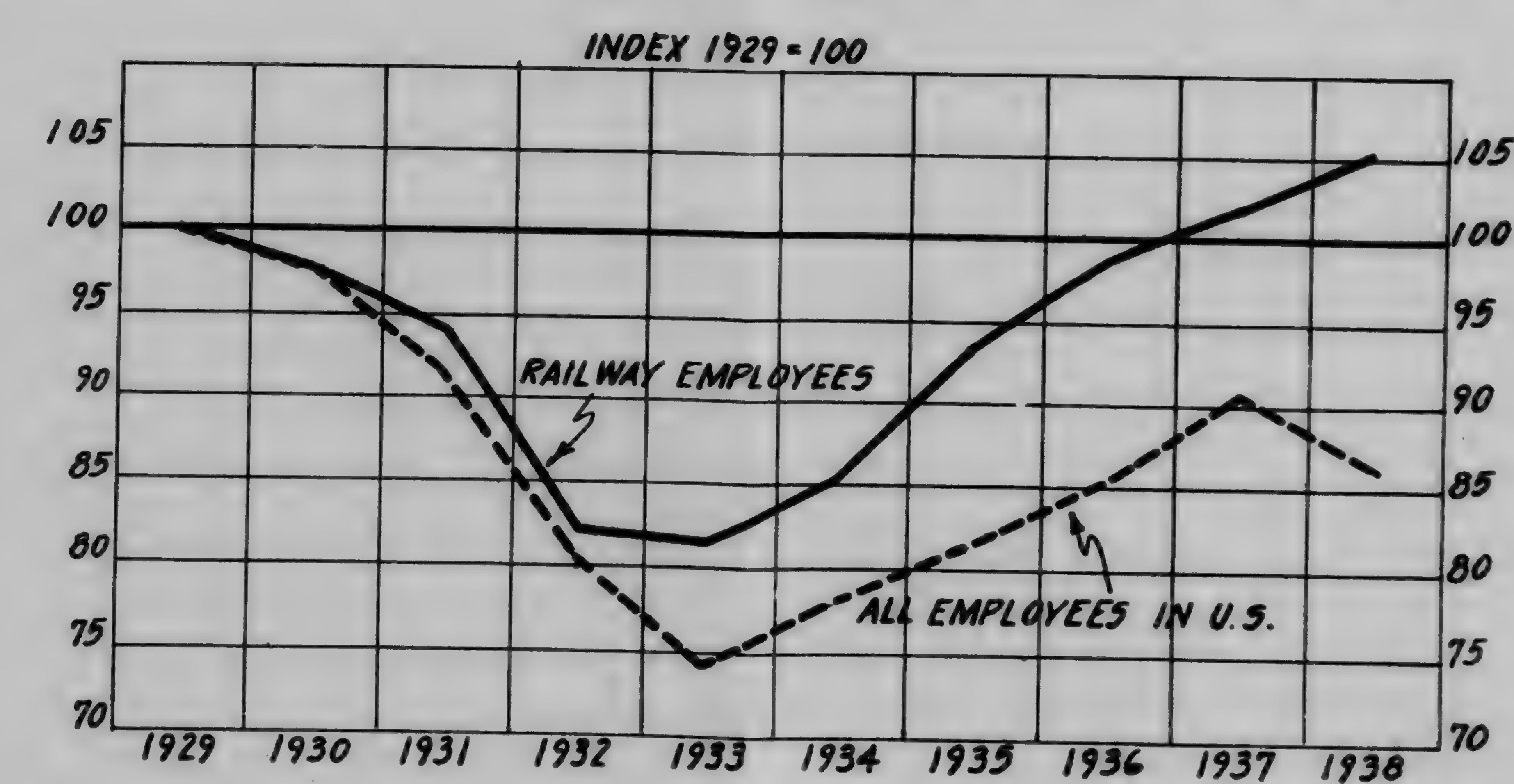
b Reports of Interstate Commerce Commission, excluding railway officers, and classes of employees not represented in wage movement. Earnings based on mid-month count of employees.

c Estimated on basis of ratio of average weekly earnings per employee, first half of year 1938 to average weekly earnings per employee year 1937.

d Estimated 103.4% of 1937; average weekly pay of railway employees for the six months of 1938 indicated an increase of 3.4% over year 1937.

File W-380-38





Carriers' Exhibit No. 75
Witness: W. I. King

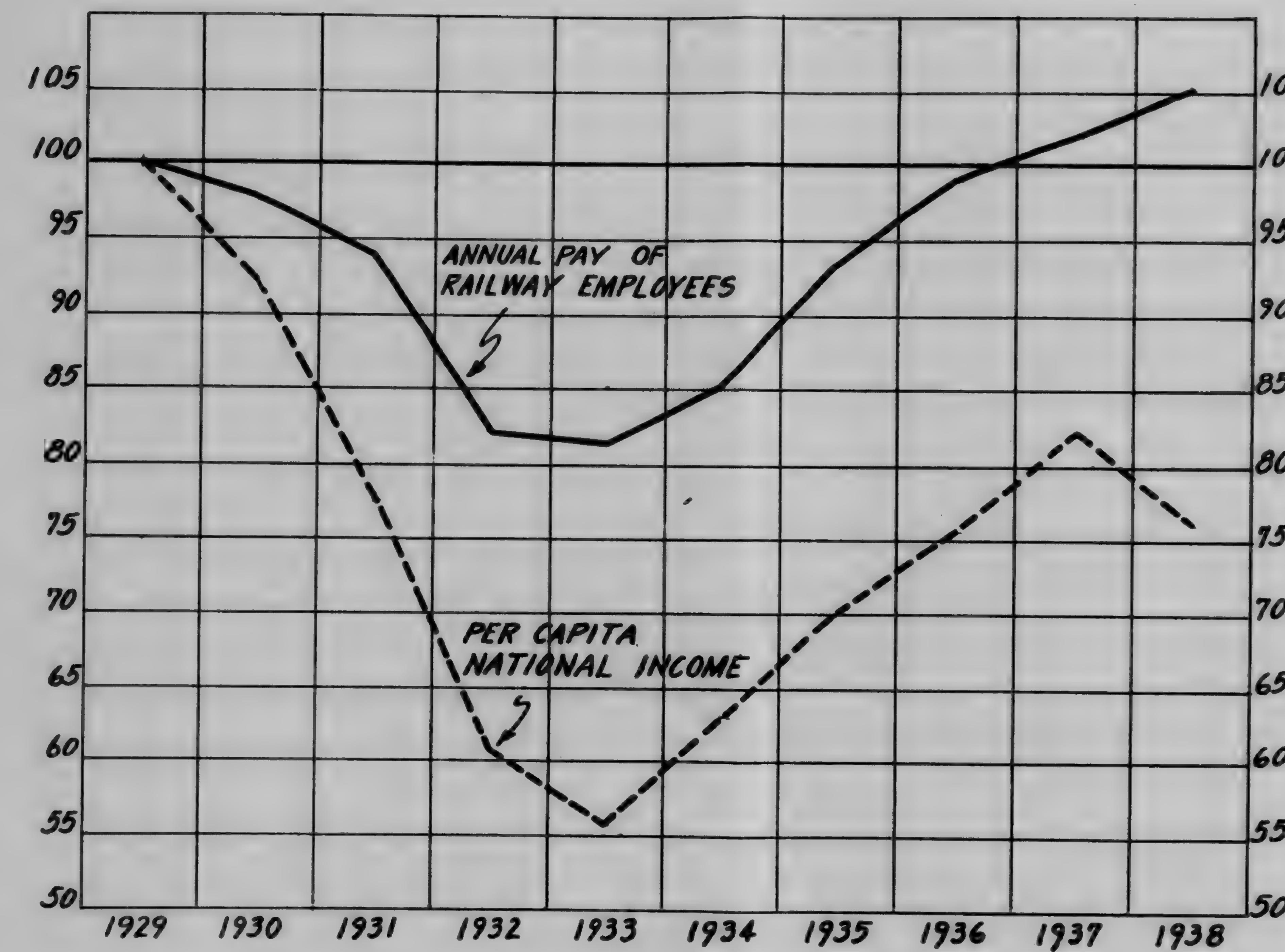
(U.S. Department of Commerce)
(Interstate Commerce Commission)

AVERAGE PAY OF RAILWAY EMPLOYEES COMPARED WITH PER CAPITA NATIONAL INCOME

Calendar year	National income paid out a	Population of U.S. at middle of year b	Per capita national income	Average annual pay of railway employees c
	(millions)			
1929	$78 556	121 526 429	$646	$1 672
1930	73 290	123 091 000	595	1 633
1931	62 032	124 113 000	500	1 572
1932	49 024	124 974 000	392	1 373
1933	45 317	125 770 000	360	1 361
1934	51 510	126 626 000	407	1 423
1935	55 137	127 521 000	432	1 566
1936	62 586	128 429 000	487	1 654
1937	69 330	129 257 000	536	1 702
1938	d 63 784	130 000 000	491	e 1 760
RELATIVES ON BASE OF 1929				
1929	100.0	100.0	100.0	100.0
1930	93.3	101.3	92.1	97.7
1931	79.0	102.1	77.4	94.0
1932	62.4	102.8	60.7	82.1
1933	57.7	103.5	55.7	81.4
1934	65.6	104.2	63.0	85.1
1935	70.2	104.9	66.9	93.7
1936	79.7	105.7	75.4	98.9
1937	88.3	106.4	83.0	101.8
1938	81.2	107.0	76.0	105.3

a U.S. Department of Commerce - "Survey of Current Business" - June, 1938.
b U.S. Department of Commerce - "Statistical Abstract 1937", page 10. 1938 estimated.
c Excluding railway officers, and classes of employees not represented in wage movement.
d Estimated 92% of 1937, based on press release of U.S. Department of Commerce dated July 29, 1938, indicating national income for first six months 1938 to be 8% below corresponding period of 1937.
e Estimated 103.4% of 1937. Average weekly pay of railway employees for first 6 months of 1937 indicated an increase of 3.4% over year 1937.

File W-277-38

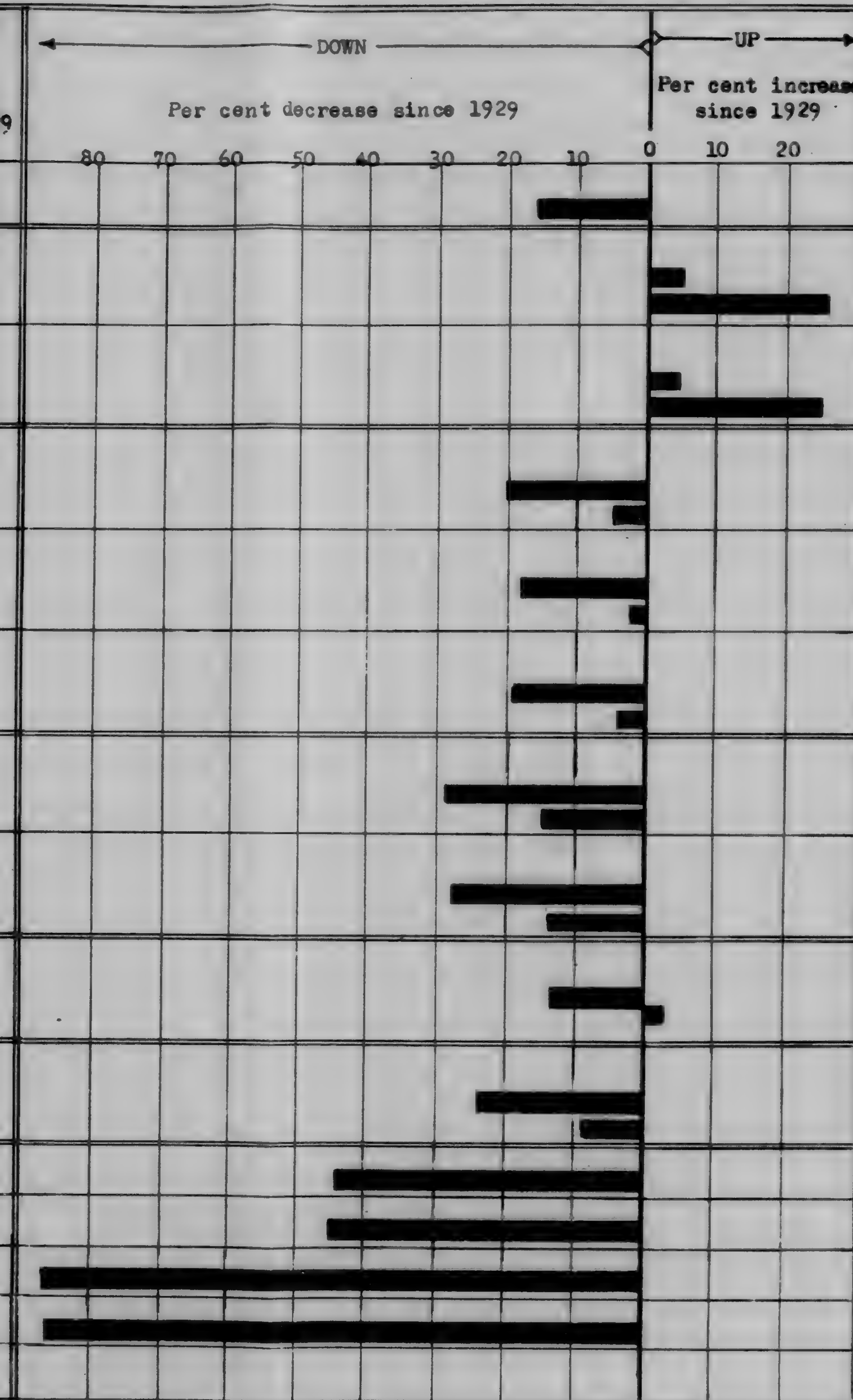


1938-1929, COMPARISON

Carriers' Exhibit No. 76
Witness: W. I. King

Railway Wages, Wages of Other Employees, National Income, Farm Income, Railroad Traffic, etc.

Item	First six months 1929	First six months 1938	Per cent increase or decrease 1938 from 1929
1. Cost of living index (year 1929 = 100)	100.0	a 83.7	16.3
2. Railway employee earnings (excl. officers & employees not in wage movement):			
a. Average weekly earnings (actual)	$32.16	$33.73	4.9
b. Average weekly earnings (real wages - 1929 dollars)	32.16	40.30	25.3
3. Railway wage workers (excl. salaried employees):			
a. Average weekly earnings (actual)	31.80	33.17	4.3
b. Average weekly earnings (real wages - 1929 dollars)	31.80	39.63	24.6
4. Male wage workers in 25 manufacturing industries (excl. salaried employees):			
a. Average weekly earnings (actual)	$30.86	$24.59	20.3
b. Average weekly earnings (real wages - 1929 dollars)	30.86	29.38	4.8
5. All wage workers in 25 manufacturing industries (excl. salaried employees):			
a. Average weekly earnings (actual)	$28.78	$23.47	18.5
b. Average weekly earnings (real wages - 1929 dollars)	28.78	28.04	2.6
6. All wage workers in manufacturing (excl. salaried employees):			
a. Average weekly earnings (actual)	$27.73	$22.24	19.8
b. Average weekly earnings (real wages - 1929 dollars)	27.73	26.57	4.2
7. Farm labor (without board):			
a. Average weekly earnings, month of April (actual)	$11.43	$8.12	29.0
b. Average weekly earnings, month of April (real wages - 1929 dollars)	11.43	9.70	15.1
8. Income per farm:			
a. Average per week (actual)	$21.61	$15.50	28.3
b. Average per week (real income - 1929 dollars)	21.61	18.52	14.3
9. All employees in United States (full-time equivalent earnings):			
a. Average weekly earnings (actual)	$27.83	$24.01	13.7
b. Average weekly earnings (real wages - 1929 dollars)	27.83	28.69	3.1
10. National income:			
a. Per capita per week (actual)	$12.39	$9.42	24.0
b. Per capita per week (real income - 1929 dollars)	12.39	11.25	9.2
11. Revenue freight carloadings (25 weeks)	24 520 384	13 641 438	44.4
12. Total operating revenues	$3 030 502 045	$1 636 408 494	46.0
13. Net railway operating income	$551 855 821	$70 289 305	87.3
14. Rate of return earned on property investment (annual basis)	5.24%	0.67%	87.2
15. Net income after fixed charges	b $374 410 000	$181 253 596	*



* Railways reported a net deficit for 1938. a Index of cost of living as of June 15, 1938, based on 1929=100. b Net income partially estimated for 1929.

Source: Item 1 and 6 Bureau of Labor Statistics, U.S. Department of Labor.
2 Interstate Commerce Commission monthly wage statistics, Statement No. M-300.
3, 4, & 5 National Industrial Conference Board.
7 U.S. Department of Agriculture.
8 U.S. Department of Agriculture - 1938 estimated on basis of press release dated August 21, 1938, estimating farm value of products retained on farm to be 10.9% below 1937, and cash income from products marketed (including Government payments) to be 12.8% below 1937.
9 & 10 U.S. Department of Commerce - National Income 1929-1937. Data for 1938 estimated on basis of reports for first 6 months of year.
11 Association of American Railroads, Car Service Division.
12, 13, 14, & 15 Reports of Interstate Commerce Commission.

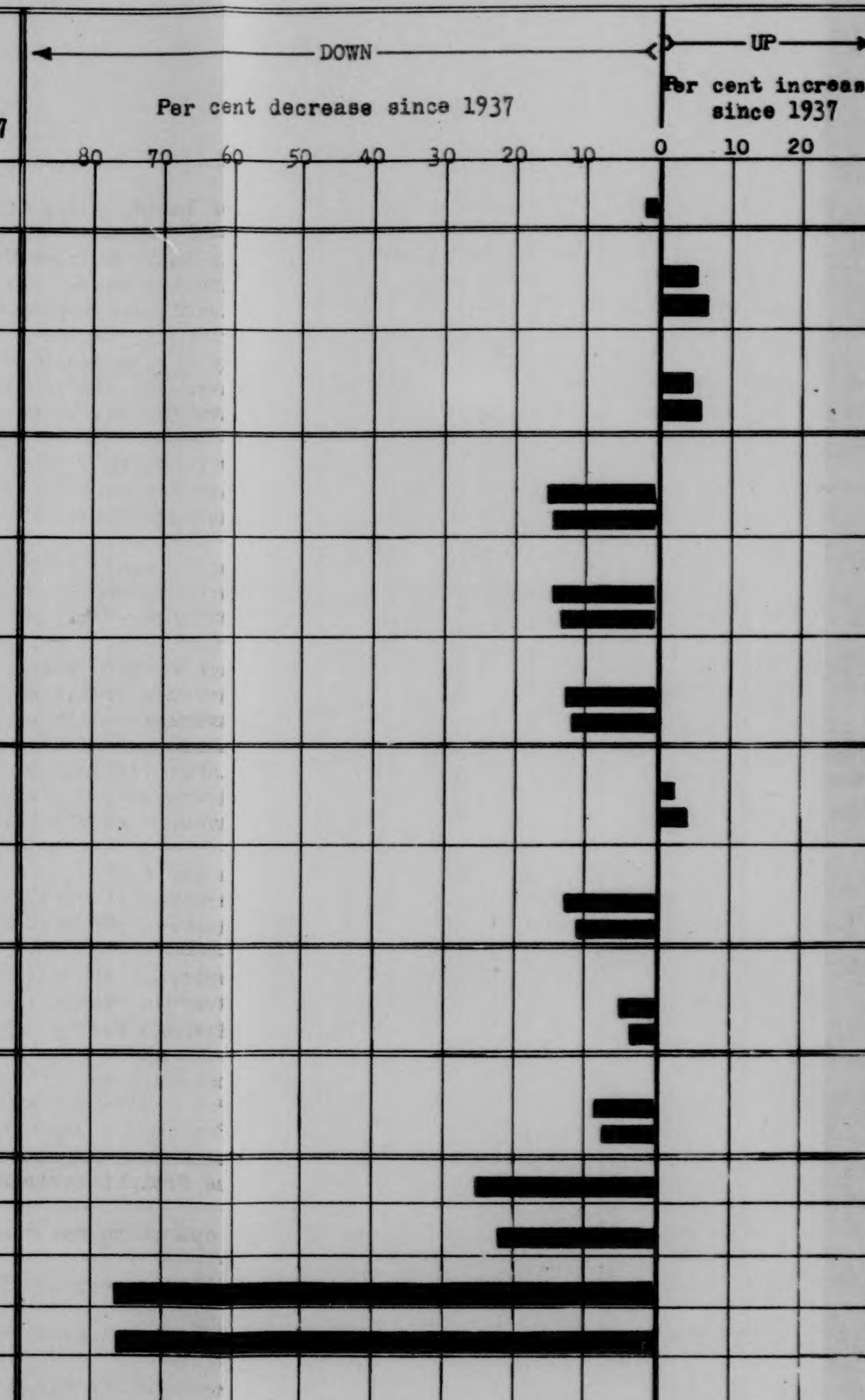
File W-347-38

1938 - 1937, COMPARISON

Carriers' Exhibit No. 17
Witness: W. I. King

Railway Wages, Wages of Other Employees, National Income, Farm Income, Railroad Traffic, etc.

Item	First six months 1937	First six months 1938	Per cent increase or decrease 1938 from 1937
1. Cost of living index (year 1929 = 100)	a 84.9	a 83.7	1.4
2. Railway employee earnings (excl. officers & employees not in wage movement):			
a. Average weekly earnings (actual)	$32.19	$33.73	4.8
b. Average weekly earnings (real wages - 1929 dollars)	37.92	40.30	6.3
3. Railway wage workers (excl. salaried employees):			
a. Average weekly earnings (actual)	31.85	33.17	4.1
b. Average weekly earnings (real wages - 1929 dollars)	37.51	39.63	5.7
4. Male wage workers in 25 manufacturing industries (excl. salaried employees):			
a. Average weekly earnings (actual)	$29.23	$24.59	15.9
b. Average weekly earnings (real wages - 1929 dollars)	34.43	29.38	14.7
5. All wage workers in 25 manufacturing industries (excl. salaried employees):			
a. Average weekly earnings (actual)	$27.51	$23.47	14.7
b. Average weekly earnings (real wages - 1929 dollars)	32.40	28.04	13.5
6. All wage workers in manufacturing (excl. salaried employees):			
a. Average weekly earnings (actual)	$25.50	$22.24	12.8
b. Average weekly earnings (real wages - 1929 dollars)	30.04	26.57	11.6
7. Farm labor (without board):			
a. Average weekly earnings, month of April (actual)	$7.97	$8.12	1.9
b. Average weekly earnings, month of April (real wages - 1929 dollars)	9.39	9.70	3.3
8. Income per farm:			
a. Average per week (actual)	$17.68	$15.50	12.3
b. Average per week (real income - 1929 dollars)	20.82	18.52	11.0
9. All employees in United States (full-time equivalent earnings):			
a. Average weekly earnings (actual)	$25.24	$24.01	4.9
b. Average weekly earnings (real wages - 1929 dollars)	29.73	28.69	3.5
10. National income:			
a. Per capita per week (actual)	$10.28	$9.42	8.4
b. Per capita per week (real income - 1929 dollars)	12.11	11.25	7.1
11. Revenue freight carloadings (25 weeks)	18 237 829	13 641 438	25.2
12. Total operating revenues	$2 086 873 083	$1 636 408 494	21.6
13. Net railway operating income	$299 466 304	$70 289 305	76.5
14. Rate of return earned on property investment (annual basis)	2.84%	0.67%	76.4
15. Net income after fixed charges	$38 896 141	$181 253 596	*



* Railways reported a net deficit for 1938. a Index of cost of living as of June 15, 1938, based on 1929=100.

Source: Item 1 and 6 Bureau of Labor Statistics, U.S. Department of Labor.
2 Interstate Commerce Commission monthly wage statistics, Statement No. M-300.
3,4,& 5 National Industrial Conference Board.
7 U.S. Department of Agriculture.
8 U.S. Department of Agriculture - 1938 estimated on basis of press release dated August 21. 1938, estimating farm value of products retained on farm to be 10.9% below 1937, and cash income from products marketed (including Government payments) to be 12.8% below 1937.
9 & 10 U.S. Department of Commerce - National Income 1929-1937. Data for 1938 estimated on basis of reports for first 6 months of year.
11 Association of American Railroads, Car Service Division.
12,13,14,& 15 Reports of Interstate Commerce Commission.

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